Court File No. CV-24-00000091-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

WABASEEMOONG INDEPENDENT NATIONS, on behalf of all TREATY 3 FIRST NATIONS
and
CHIEF WAYLON SCOTT, on his own behalf and on behalf of all members of the WABASEEMOONG INDEPENDENT NATIONS and all members of Treaty 3 First Nations

Plaintiffs

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by the ATTORNEY GENERAL OF CANADA

Defendant

(Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6)

REPLY RECORD OF THE PLAINTIFF
Motion for Certification

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and

CHIEF WAYLON SCOTT, on his own behalf and on behalf of all members of the WABASEEMOONG INDEPENDENT NATIONS and all members of TREATY 3 FIRST NATIONS

Plaintiff

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by the ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF HEAVEN DESCHAMPS

Sworn on December 1, 2025
(in support of the Application for Certification brought pursuant to *Class Proceedings Act*, 1992, S.O. 1992, c. 6)

I, **Heaven Deschamps**, of the City of Calgary, in the Province of Alberta, do solemnly AFFIRM THAT:

1. I work as a Legal Assistant at Maurice Law. In this role I have personal knowledge of the facts and matters described herein; except where I have stated to be based on information and belief in which case I verily believe those facts to be true.

2. I have reviewed the Affidavit of Stefan Matiation dated October 23, 2025 (the "Matiation Affidavit") contained in the Record of the Defendant in Response to the Plaintiff's Motion for Certification of the herein proceeding, and the herein Affidavit has been prepared in reply to the Matiation Affidavit.

3. The Affidavit of Mr. Matiation's colleague, Marie-Laurence Daigle, filed in response to the Motion for Certification in *Nepinak and Acoose v. Canada* in Federal Court (T-199-24) discloses that there are eleven First Nations in Treaty 4 with outstanding treaty annuities indexing Specific Claims. Attached hereto and marked as **Exhibit "A"** is the Affidavit of Marie-Laurence Daigle of the Specific Claims Branch of Crown-Indigenous Relations and Northern Affairs Canada ("**CIRNAC**") dated August 14, 2024 (the **"Daigle Affidavit"**).

<u>Pasqua First Nation's Experience with TAI Specific Claim</u>

4. I am told and verily believe that, Pasqua First Nation ("Pasqua") which is one of the Treaty 4 Nations advancing a treaty annuities indexing Specific Claim, is before the Specific Claims Tribunal (File no. SCT-5003-24) because extra-judicial negotiations with the Minister failed. Attached hereto and marked as **Exhibit "B"** is a copy of the Affidavit of Matthew Todd Peigan, (the "Peigan Affidavit") that was filed in response to Canada's Application to Strike Pasqua's Declaration of Claim filed in SCT-5003-24. The Peigan Affidavit sets out the events that led to the rejection of Pasqua's Claim by Canada including:

a. Pasqua submitted its Specific Claim Submission to Crown Indigenous Relations Canada ("CIRNAC") on March 25, 2022 (para. 6);

b. On May 16, 2022, Stefan Matiation on behalf of CIRNAC advised Pasqua that the Claim would undergo early review to determine if it met minimum standards (para. 7);

c. Mr. Matiation wrote to Pasqua on November 30, 2022 to advise that Pasqua's Claim had been filed with CIRNAC on September 20, 2022 and the parameters for bilateral meetings between the Minister and Pasqua would commence (para. 8);

d. Pasqua and its legal counsel met with CIRNAC on July 5, 2023 to negotiate a resolution to the Claim (para. 10 -11);

e. CIRNAC requested that Pasqua propose a methodology and framework for settlement of <u>all</u> Treaty 4 treaty annuities indexing Specific Claims in the spirit of CIRNAC and Pasqua's earlier efforts devising the Treaties 4, 5 and 6 Expedited Framework establishing the methodology and framework to resolve the outstanding Treaty 4 Agricultural Benefits Claims (para. 12);

f. Thereafter, Pasqua developed a methodology and proposed the framework for resolving the Treaty 4 treaty annuities indexing Specific Claims. This was provided to provided to CIRNAC on November 15, 2023 (para. 22); and

g. On April 8, 2024, the Deputy Minister of CIRNAC suddenly and without warning wrote to Pasqua and terminated negotiations (para. 36 – 37).

5. On July 24, 2024, Pasqua filed the Declaration of Claim attached hereto and marked as **Exhibit "C"** (*Pasqua First Nation v His Majesty the King* SCT-5003-24).

6. On February 24, 2025, Canada brought an Application to Strike Pasqua's Declaration of Claim on the grounds that the Claim was still within the Minister's unilateral discretionary three-year deliberation period permitted under s. 16(1) of the *Specific Claims Tribunal Act,* SC 2008, c 22. Attached hereto and marked as **Exhibit "D"** is Canada's Notice of Application and for Leave to Strike Proceedings in *Pasqua First Nation v His Majesty the King* SCT-5003-24.

7. Canada's motion to strike Pasqua's Claim was heard by the Tribunal on April 16, 2025. The Tribunal dismissed Canada's motion on July 24, 2025. Attached hereto and marked as **Exhibit "E"** is a copy of the Tribunal's reasons. The reasons set out the chronology of events that led to a breakdown of negotiations at CIRNAC.

8. Following the dismissal of Canada's motion to strike, Canada filed its Response to Pasqua's Declaration of Claim on August 25, 2025. Attached hereto and marked as **Exhibit "F"** is a copy of Canada's Response to Pasqua's Declaration of Claim. The Response contests that the Tribunal has jurisdiction over Pasqua's Claim (para. 17) and asserts that Pasqua is barred from seeking compensation for breaches that are less than 15 years old (para. 18).

Affirmed before me at the City of Calgary in the Province of Alberta on 1st day of December 2025.	
Kelley V. Humber	Heaven Deschamps
Kelley V. Humber A Commissioner of Oaths in the Province of Alberta (LSA: #26777) and Ontario (LSO #89406W)	**Heaven Deschamps**

Kelley V. Humber
Commissioner for Oaths in and for the Province of Alberta

This is Exhibit "A" referred to in the Affidavit of

HEAVEN DESCHAMPS

Affirmed before me on this 1st day

of December, 2025

Kelley Humber

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Alberta

Federal Court File No. T-199-24

FEDERAL COURT

BETWEEN:

CHIEF DEREK NEPINAK

and

CHIEF BONNY LYNN ACOOOSE

Plaintiffs

- and -

HIS MAJESTY THE KING

Defendant

Class Proceeding commenced under Part 5.1 of the *Federal Court* Rules, SOR/98-106

AFFIDAVIT OF MARIE-LAURENCE DIAGLE
Affirmed August 14, 2024

ATTORNEY GENERAL OF CANADA

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Per: Scott Farlinger 431-489-8659 / Neil Goodridge 204-293-6124
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Court File No.:T-199-24

FEDERAL COURT

BETWEEN:

CHIEF DEREK NEPINAK

and

CHIEF BONNY LYNN ACOOOSE

Plaintiffs

- and -

HIS MAJESTY THE KING

Defendant

AFFIDAVIT OF MARIE-LAURENCE DAIGLE

I, Marie-Laurence Daigle, of the City of Gatineau in the Province of Quebec, AFFIRM THAT:

1. I am the Research Director for the Specific Claims Branch of Crown-Indigenous Relations and Northern Affairs Canada. As such, I have personal knowledge of the facts and matters hereinafter deposed to by me, except where stated to be based on information and belief in which case I believe those facts to be true.

2. The duties of the Specific Claims Branch include receiving submissions of specific claims from First Nations. The Specific Claims Policy, which is publicly accessible online at https://www.rcaanc-cirnac.gc.ca/eng/1100100030501/151288705629, sets out, among other things, the process for submission of claims and how claims are filed with the Minister. A copy of the Specific Claims Policy, which sets out the process for the review of specific claims, is attached to this affidavit and marked as **Exhibit A**.

3. Once a specific claim is submitted, it is assessed against the Minimum Standard set out in Annex A to the Specific Claims Policy to determine whether it may be filed with the Minister, or returned to the First Nation with an explanation as to why it has not been filed with the Minister. The Specific Claims Branch notifies the First Nation in writing when the First Nation's specific claim has been filed with the Minister.

4. The Specific Claims Branch also reports publicly on those specific claims that have been filed with the Minister, through the Reporting Centre on Specific Claims. Public reports are available online at https://services.aadnc-aandc.gc.ca/SCBRI_E/Main/ReportingCentre/External/externalreporting.aspx.

5. The Status Report on Specific Claims provides "up-to-date information about the status of individual First Nation specific claims, along with a brief description of the claim and key dates", which include the date on which the claim was filed with the Minister.

6. Attached hereto and marked as **Exhibits B, C, and D** are copies of Status Reports on Specific Claims from the Specific Claims Branch as of August 6, 2024, for the Provinces of Saskatchewan and Manitoba, covering all First Nations with specific claims relating to the indexation of annuities under Treaty 4 that had been filed with the Minister. There were no such claims with respect to First Nations in the Province of Alberta.

7. At that time, eleven specific claims relating to the indexation of annuities under Treaty 4 had been filed with the Minister, and the Specific Claims Branch notified the First Nations listed below that their claim had been filed with the Minister on the following dates:

    a. Pasqua First Nation, on September 20, 2022;

    b. Cote First Nation, on May 1, 2023;

    c. Mosquito, Grizzly Bear's Head, Lean Man First Nations, on May 15, 2023;

    d. Muskowekwan, on October 16, 2023;

    e. Day Star, on February 5, 2024;

    f. George Gordon First Nation, on February 5, 2024;

g. Okanese, on February 5, 2024;

h. Piapot, on February 5, 2024;

i. Kahkewistahaw, on March 18, 2024;

j. Muscowpetung, on April 29, 2024; and

k. Tootinaowaziibeeng Treaty Reserve, on June 10, 2024.

8. On July 24, 2024, Pasqua First Nation filed a declaration of claim with the Specific Claims Tribunal with respect to their previously-filed specific claim relating to the indexation of annuities under Treaty 4. A copy of that declaration of claim is attached to this affidavit and marked as **Exhibit E.** Pasqua First Nation's declaration of claim asserts that a letter dated December 18, 2023 amounts to a rejection of their specific claim for negotiation. I am not aware of what position the Attorney General of Canada will take in response to that declaration of claim, nor would I be involved in instructing the Department of Justice Canada with respect to that claim.

9. I make this affidavit in response to the Motion for Certification in the within class proceedings. I know of no fact material to the motion that has not been disclosed in this affidavit.

AFFIRMED REMOTELY by **Marie-Laurance Daigle** at the City of Gatineau, in the Province of Ontario, before me at the City of Ottawa, in the Province of Ontario, on this 14th day of August, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Schmiedendorf, Carling
Digitally signed by Schmiedendorf, Carling
DN: C=CA, O=GC, OU=Jus-Jus, CN="Schmiedendorf, Carling"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, ON
Date: 2024.08.14 12:26:18-04'00'
Foxit PDF Editor Version: 13.1.0

Commissioner for Oaths
Carling Schmiedendorf
237232
for Québec, with jurisdiction across Canada and all Countries

Daigle, MarieLaurence 0
Digitally signed by Daigle, MarieLaurence 0
Date: 2024.08.14 12:18:16 -04'00'

MARIE-LAURANCE DAIGLE

This is **Exhibit "A"** referred to in the

Affidavit of **MARIE-LAURANCE DAIGLE**

Affirmed before me remotely on August 14, 2024.

Schmiedendorf, Carling

Digitally signed by Schmiedendorf, Carling
DN: C=CA, O=GC, OU=Jus-Jus, CN="Schmiedendorf, Carling"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, ON
Date: 2024.08.14 12:23:53-04'00'
Foxit PDF Editor Version: 13.1.0

Commissioner of Oaths
Carling Schmiedendorf
#237232
for Quebec, with jurisdiction across Canada and all Countries

Government of Canada Gouvernement du Canada

The Specific Claims Policy and Process Guide

Table of Contents

Introduction

In 1982, the federal government released Outstanding Business: A Native Claims Policy, which set out the policy on specific claims and guidelines for the assessment of claims and negotiations. Important amendments were made to the Specific Claims Policy in the early 1990s.

On June 12, 2007, the Prime Minister announced Justice at Last: Specific Claims Action Plan, which outlined plans to accelerate the resolution of specific claims in order to provide justice for First Nation claimants and certainty for government, industry and all Canadians. The Action Plan is intended to ensure impartiality and fairness, greater transparency, faster processing and better access to mediation.

A key feature of the Action Plan is the *Specific Claims Tribunal Act*, which came into force on October 16, 2008. Pursuant to the Act, First Nations may choose to file claims with the independent Tribunal that are not accepted for negotiation or that are not resolved through a negotiated settlement agreement within a specified time frame.

The fundamental principles of the Specific Claims Policy as articulated in Outstanding Business: A Native Claims Policy have not changed. These principles are: an outstanding lawful obligation must be confirmed, valid claims will be compensated in accordance with legal principles and any settlement reached must represent the final resolution of the grievance. The purpose of this document is to set out an updated policy statement and process guide that reflects the foregoing developments and ensures consistency of language between the Specific Claims Policy and the *Act*.

Justice at Last: Specific Claims Action Plan

Justice at Last: Specific Claims Action Plan is designed to dramatically improve the specific claims process and address the backlog of specific claims through the implementation of practical measures to enhance the efficiency of processing. The Action Plan built on the lessons learned from previous attempts to reform the specific claims process, the recommendations in the Standing Senate Committee on Aboriginal Peoples' final report on specific claims entitled Negotiation or Confrontation: It's Canada's Choice, which was tabled in the Senate on February 7, 2007, and the advice of First Nations.

The Action Plan has four interdependent pillars:

- creation of a legislated independent Tribunal with the authority to issue binding decisions;
- dedicated funding for settlements in the amount of $250 million per year for ten years;
- faster processing of specific claims and improvements to internal government procedures; and
- better access to mediation services to help the parties reach negotiated settlements.

The Specific Claims Tribunal Act

The *Specific Claims Tribunal Act* (the Act), developed jointly with the Assembly of First Nations, was introduced in the House of Commons on November 27, 2007, received Royal Assent on June 18, 2008 and came into force on October 16, 2008. The *Act* creates an independent adjudicative body known as the Specific Claims Tribunal (the Tribunal) and introduces timelines for the assessment and negotiation of specific claims. The Tribunal provides First Nations with a further alternative to the courts to settle specific claims.

As set out in the *Specific Claims Tribunal Act*, there are four scenarios in which a First Nation may file a claim with the Tribunal:

- the Minister has notified the First Nation of his or her decision not to negotiate the claim, in whole or in part;
- 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;
- in the course of negotiating the claim, the Minister consents in writing to the filing of the claim with the Tribunal; or,

- three years have elapsed after the day on which the Minister has notified the First Nation in writing of his or her decision to negotiate the claim, in whole or in part, and the claim has not been resolved by a final settlement agreement.

The Policy

The term "specific claims," generally, refers to claims made by a First Nation against the federal government which relate to the administration of land and other First Nation assets and to the fulfilment of Indian treaties, although the treaties themselves are not open to renegotiation.

The primary objective of the federal government with respect to the Specific Claims Policy is to discharge its lawful obligation, as determined by the courts if necessary. Negotiation, however, remains the preferred means of settlement by the federal government. The Specific Claims Policy establishes the principles and process for resolving specific claims through negotiation.

Assessment of Claims

In order to be assessed within the Specific Claims Policy, a specific claim:

- must be submitted by a First Nation [1] and the First Nation submitting the claim must be the First Nation suffering the alleged grievance, or a group of First Nations if all are submitting the same claim;
- must concern events that occurred at least 15 years prior to the filing of the claim;
- cannot be based on a land claims agreement [1] or self-government agreement entered into after December 31, 1973 or any related agreement or Act of Parliament;

- cannot concern the delivery or funding of programs or services related to policing, regulatory enforcement, corrections, education, health, child protection or social assistance, or of any similar programs or services;
- cannot be based on an agreement between the First Nation and the Crown that provides for another mechanism for the resolution of disputes arising from the agreement;
- cannot be based on, or allege, Aboriginal rights or title;
- cannot be based on treaty rights related to activities of an ongoing and variable nature, such as harvesting rights; and
- must be compensable in accordance with the compensation criteria.

Grounds for a Claim

A First Nation may submit a claim seeking compensation for its losses based on any of the following grounds:

a. a failure to fulfil a legal obligation of the Crown [1] to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown [1];

b. a breach of a legal obligation of the Crown [1] 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 [1] 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 [1] of reserve lands;

e. a failure to provide adequate compensation for reserve lands taken or damaged by the Crown [1] or any of its agencies under legal authority; or

f. fraud by employees or agents of the Crown [1] in connection with the acquisition, leasing or disposition of reserve lands.

Compensation

The compensation criteria as previously set out in Outstanding Business: A Native Claims Policy shall continue to be the basis upon which compensation is determined.

1. As a general rule, a claimant band shall be compensated for the loss it has incurred and the damages it has suffered as a consequence of the breach by the federal government of its lawful obligations. This compensation will be based on legal principles.
2. Where a claimant band can establish that certain of its reserve lands were taken or damaged under legal authority, but that no compensation was ever paid, the band shall be compensated by the payment of the value of these lands at the time of the taking or the amount of the damage done, whichever is the case.
3.
   a. Where a claimant band can establish that certain of its reserve lands were never lawfully surrendered, or otherwise taken under legal authority, the band shall be compensated either by the return of the lands or by the current unimproved value of the lands.
   b. Compensation may include an amount based on the loss of use of the lands in question, where it can be established that the claimants did in fact suffer such a loss. In every case the loss shall be the net loss.
4. Compensation shall not include any additional amount based on "special value to the owner" unless it can be established that the land

in question had a special economic value to the claimant band, over and above its market value.

5. Compensation shall not include any additional amount for the forcible taking of land.
6. Where compensation received is to be used by the First Nation for the purchase of other lands, such compensation may include reasonable acquisition costs, but these costs must not exceed 10% of the appraised value of the lands to be acquired.
7. Where it can be justified, a reasonable portion of the costs of negotiation may be added to the compensation paid.
8. In any settlement of specific native claims the government will take third party interests into account. As a general rule, the government will not accept any settlement which will lead to third parties being dispossessed.
9. Any compensation paid in respect to a claim shall take into account any previous expenditures already paid to the claimant in respect to the same claim.
10. The criteria above are general in nature and the actual amount which the claimant is offered will depend on the extent to which the claimant has established a valid claim, the burden of which rests with the claimant. As an example, where there is doubt that the lands were ever reserve land, the degree of doubt will be reflected in the compensation offered.

In respect to criterion 2, established practice will continue. Compensation will be equal to the market value of the reserve land at the time that it was taken brought forward to the present value. Similarly, in respect to damage, compensation will be equal to the historical value of the damage done brought forward to the present value.

Certainty and Finality

The federal government requires certainty and finality when it settles a claim. A claim settlement must achieve complete and final redress of the claim. First Nations must, therefore, provide the federal government with a release and an indemnity with respect to the claim, and may be required to provide a surrender, end litigation or take other steps so that the claim cannot be re-opened at some time in the future.

In any settlement of specific claims the federal government will take third party interests into account. The federal government will not accept any settlement which will lead to third parties being dispossessed. A claimant may use settlement money to purchase lands. Any land purchased by a claimant would be on a willing-seller/willing-buyer basis.

First Nations achieving a settlement of their claims are expected to manage the proceeds of the settlement themselves. In the case of substantial settlements, the final agreement may specify the structure of mechanisms established by the First Nation to administer settlement benefits.

Statutes of Limitation, the Doctrine of Laches and Other Defences

Statutes of limitation are federal or provincial statutes which limit the time within which legal action may be taken in the courts to resolve a grievance. The right to take action will, therefore, expire after a certain length of time unless legal proceedings have been started.

With respect to specific claims, however, the federal government decides whether to negotiate each claim on the basis of the issues involved. First Nations with longstanding grievances will not have their claims rejected before they are even heard because of the technicalities provided under the statutes of limitation or under the doctrine of laches. In other words, the federal government is not going to refrain from negotiating claims on the basis that they are submitted too late (statutes of limitation) or because the First Nation has waited too long to present its claim (doctrine of laches).

Each claim submission will be assessed on its own facts and merits. All relevant historical evidence will be considered and not only evidence which, under strict legal rules, would be admissible in a court of law. Therefore, the acceptance of a claim for negotiation is not to be interpreted as an admission of liability and, in the event no settlement agreement is reached and litigation ensues, the federal government reserves the right to plead all defences available to it, including limitation periods, laches and lack of admissible evidence.

The Specific Claims Process

The Process

1. Submission

First Nations are responsible for researching their own claims and submitting those claims in accordance with the Minimum Standard (see Annex A). The Minister of Indian Affairs and Northern Development will notify First Nations in writing when their claim submission has been received.

2. Early Review: Minimum Standard

Within six months of receipt by the Minister, all claim submissions will be assessed against the Minimum Standard. All claim submissions that meet the Minimum Standard will be filed with the Minister. The First Nation will be notified in writing whether the claim has been "filed with the Minister." It is the date of filing that marks the beginning of the three-year assessment period. If a claim submission does not meet the Minimum Standard, it will be returned to the First Nation with an explanation as to why it has not been filed with the Minister.

The claim filed with the Minister is the same claim that may ultimately be filed with the Tribunal by the First Nation, consequently, no new allegation, grounds or evidence can be added to the claim once the First Nation has been notified that its claim has been filed with the Minister.

3. Research and Assessment

Once the claim is filed with the Minister, the Minister then has three years to assess it in accordance with the assessment criteria and the six grounds for establishing a specific claim set out in the Policy section of this publication. As part of its assessment, the Specific Claims Branch may perform additional research and obtain legal advice.

In the event the First Nation does not receive a response as to whether its claim has been accepted for negotiation within the three-year time period, the First Nation has the option of either waiting for the results of the federal government's assessment or filing the claim with the Tribunal for a determination on its validity and compensation.

4. Negotiation and Settlement

In cases where the Minister has notified the First Nation that its claim has been accepted for negotiation, in whole or in part, negotiations with the First Nation will follow. Although the three-year time frame for negotiations begins on the date the Minister notifies the First Nation in writing that the claim has been accepted for negotiation, the negotiation process itself will not begin until the Minister has received evidence, such as a Band Council Resolution, stating that the First Nation is prepared to enter into negotiations on the basis set out in the notification of acceptance.

A First Nation may choose to refer the claim to the Tribunal for a determination on validity and compensation if after three years a settlement agreement has not been reached or within the three-year negotiation period if both the First Nation and the Minister agree.

Once an agreement has been reached between the First Nation and the federal government, the final settlement agreement is ratified and signed, final releases and compensation are provided and the claim is settled.

Mediation

The vast majority of specific claims that enter into a negotiation process will likely be resolved by a final settlement agreement. The federal government remains committed to the principle that specific claims are best settled through negotiation. Mediation can be a valuable tool to help in settling disputes and the federal government will ensure these services will be available.

Claims over $150 million

Claims valued over $150 million require the Minister to obtain a discrete mandate prior to being accepted for negotiation. "Claims over $150 million" is not a new class or category of claim. These claims are still specific claims as defined in the Specific Claims Policy.

Conclusion

All Canadians benefit from the resolution of specific claims and the resolution of claims outside of the court process is in the best interests of all Canadians. Negotiated settlements are about justice, respect and reconciliation. They are not only about coming to terms with the past and respect for treaties but also about moving forward together to realize a better, shared future.

Find out more

Call (toll free): 1-800-567-9604
(TTY): 1-866-553-0554

Glossary

- "First Nation" means a Band as defined in section 2(1) of the *Indian Act*; or a group of persons that was, but is no longer, an *Indian Act* Band that has retained the right to bring a specific claim under a land claim or self-government agreement.
- "land claims agreement" has the same meaning as in subsection 35(3) of the *Constitution Act, 1982*.
- "Crown" means her Majesty in Right of Canada.
- For the purposes of the section "Grounds for a Claim," "Crown" means as follows:
  - For the purpose of applying paragraphs (a) to (c) in respect of any legal obligation that was to be performed in an area within Canada's present boundaries before that area became part of Canada, a reference to the Crown includes the Sovereign of Great Britain and its colonies to the extent that the legal obligation or

any liability relating to its breach or non-fulfilment became - or would, apart from any rule or doctrine that had the effect of limiting claims or prescribing rights against the Crown because of passage of time or delay, have become - the responsibility of the Crown in right of Canada.

- For the purpose of applying paragraph (d) in respect of an illegal lease or disposition of reserve land located in an area within Canada's present boundaries before that area became part of Canada, a reference to the Crown includes the Sovereign of Great Britain and its colonies to the extent that liability for the illegal lease or disposition became - or would, apart from any rule or doctrine that had the effect of limiting claims or prescribing rights against the Crown because of passage of time or delay, have become - the responsibility of the Crown in right of Canada.
- For the purpose of applying paragraphs (e) and (f) in respect of reserve lands located in an area within Canada's present boundaries, a reference to the Crown includes the Sovereign of Great Britain and its colonies for the period before that area became part of Canada.

Annex A

Minimum Standard

The *Specific Claims Tribunal Act* requires the Minister to post the Minimum Standard on the Internet. The Minimum Standard is replicated here in its entirety. The "Specific Claims Policy" referred to below is this publication, The Specific Claims Policy and Process Guide.

Minimum Standard for Kind of Information

1. Claim Document

The claim document must include:

- a list of allegations based on one or more of the grounds related to the validity of the claim, as set out in the Specific Claims Policy;
- legal arguments supporting each allegation;
- a statement of the facts supporting the allegations;
- a statement that compensation is being claimed; and,
- a list of authorities with citations, including treaties, statutes, case law and law journal articles, that support the allegations (copies not required).

2. Historical Report

An historical report, including references to supporting documents, outlining the factual circumstances surrounding the allegations, must be provided.

3. Supporting Documents

Complete copies of primary documents and relevant excerpts of secondary documents relied upon to support the allegations included in the claim document and referred to in the historical report are also necessary. Further details related to supporting documents are included in the "Form and Manner" Minimum Standard.

Minimum Standard for Form and Manner

1. The documents provided in support of the claim submission must be clearly labelled with the document source and number. Supporting documents must be identified as referenced in the claim document and/ or the historical report and/or the list of all allegations. A separate

document index setting out, at a minimum, the document number, date and archival reference where applicable, must be provided with the claim submission.

2. Documents can be submitted as hard copies and/or on CD-Rom, DVD-ROM, or any other standard mass storage device.
3. The supporting documents must be legible and complete. This may require preparing transcripts of documents that are of poor quality or are difficult to read. Avoid writing on copies of documents included in the submission and ensure that document pages are not cut off, stapled through or added to binders in a manner that obscures the text. Minor technical errors, such as a missing page or illegible photocopy, will be brought to the attention of the claimant so that the error may be addressed by the claimant. This should not, however, affect compliance with the Minimum Standard.
4. Specific claims submissions must be sent by mail or courier to the Director General for the Specific Claims Branch at Indian and Northern Affairs Canada at the following address:

   Director General
   Specific Claims Branch
   Indian and Northern Affairs Canada
   Les Terrasses de la Chaudière
   10 Wellington Street, Room 1660
   OTTAWA ON K1A 0H4

   A claim submission cannot be submitted electronically by fax or e-mail.
5. The specific claim submission must include a clear statement indicating that the claim is being submitted on behalf of a "First Nation" as defined in the Specific Claims Policy.

6. Where a specific claim is submitted on behalf of a First Nation as defined in the Specific Claims Policy, the claim submission must include evidence, such as a Band Council Resolution, that the claim is being submitted with the express authority of that First Nation.

1 These terms are defined in the Glossary.

Did you find what you were looking for?

Yes No

What was wrong?

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Please provide more details

You will not receive a reply. Don't include personal information (telephone, email, SIN, financial, medical, or work details).

Maximum 300 characters

Submit

Date modified: 2021-06-04

This is **Exhibit "B"** referred to in the

Affidavit of **MARIE-LAURANCE DAIGLE**

Affirmed before me remotely on August 14, 2024.

Schmiedendorf, Carling

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Commissioner of Oaths
Carling Schmiedendorf
#237232
for Quebec, with jurisdiction across Canada and all Countries

Crown-Indigenous Relations and Northern Affairs Canada / Relations Couronne-Autochtones et Affaires du Nord Canada

Canada

UNCLASSIFIED
Report as of 2024/08/06

Specific Claims Branch
Status Report on Specific Claims

SASKATCHEWAN (9)

Claimant & Claim Name	Current Status & Description	Key Dates (yyyy/mm/dd)
Cote First Nation 366 (BAND-366)		
Treaty 4 Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase (index) the annual payments of $5 for every man, woman and child as set out in Treaty 4 in order to offset the impacts of inflation and maintain the purchasing power thereof.	- Date Claim Filed: 2023/05/01 - Research Start Date : 2023/05/02
Day Star (BAND-389)		
Treaty 4 Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase the annual payments of $5 for every man, woman and child as set out in Treaty 4 in order to offset the impacts of inflation and maintain the purchasing power thereof.	- Date Claim Filed: 2024/02/05 - Research Start Date : 2024/02/06
George Gordon First Nation (BAND-391)		
Treaty 4 Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase the annual payments of $5 to each band member as set out in Treaty 4 for the purposes of offsetting the impacts of inflation and maintaining the purchasing power thereof.	- Date Claim Filed: 2024/02/05 - Research Start Date : 2024/02/06

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Canada

UNCLASSIFIED
Report as of 2024/08/06

Specific Claims Branch
Status Report on Specific Claims

SASKATCHEWAN (9)

Claimant & Claim Name	Current Status & Description	Key Dates (yyyy/mm/dd)
Kahkewistahaw (BAND-362)		
Treaty 4 Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase the annual payments of $5 for every man, woman and child as set out in Treaty 4 in order to offset the impacts of inflation and maintain the purchasing power thereof.	- Date Claim Filed: 2024/03/18 - Research Start Date : 2024/03/19
Muscowpetung (BAND-381)		
Treaty 4 Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges failure to increase the annual payments of $5 for every man, woman and child as set out in Treaty 4 in order to offset the impacts of inflation and maintain the purchasing power thereof.	- Date Claim Filed: 2024/04/29 - Research Start Date : 2024/04/30
Muskowekwan (BAND-392)		
Treaty 4 Annuities Indexation	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase the annual payments of $5 for every man, woman and child as set out in Treaty 4 in order to offset the impacts of inflation and maintain the purchasing power thereof.	- Date Claim Filed: 2023/10/16 - Research Start Date : 2023/10/17

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Report as of 2024/08/06

Specific Claims Branch
Status Report on Specific Claims

SASKATCHEWAN (9)

Claimant & Claim Name	Current Status & Description	Key Dates (yyyy/mm/dd)
Okanese (BAND-382)		
Treaty 4 Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase the annual payments of $5 to each band member as set out in Treaty 4 for the purposes of offsetting the impacts of inflation and maintaining the purchasing power thereof.	- Date Claim Filed: 2024/02/05 - Research Start Date : 2024/02/06
Pasqua First Nation #79 (BAND-383)		
Treaty 4 Annuities Indexation	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase the annual payments of $5 for every man, woman and child as set out in Treaty 4 in order to offset the impacts of inflation and maintain the purchasing power thereof.	- Date Claim Filed: 2022/09/20 - Research Start Date : 2022/09/21
Piapot (BAND-385)		
Treaty 4 Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase (index) the annual payments of $5 for every man, woman and child as set out in Treaty 4 ("the Annuity Payments") in order to offset the impacts of inflation and maintain the purchasing power thereof.	- Date Claim Filed: 2024/02/05 - Research Start Date : 2024/02/06

This is **Exhibit "C"** referred to in the

Affidavit of **MARIE-LAURANCE DAIGLE**

Affirmed before me remotely on August 14, 2024.

Schmiedendorf, Carling

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#237232
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Report as of 2024/08/06

Specific Claims Branch
Status Report on Specific Claims

SASKATCHEWAN (1)

Claimant & Claim Name	Current Status & Description	Key Dates (yyyy/mm/dd)
Mosquito, Grizzly Bear's Head, Lean Man First Nations (BAND-343)		
Treaty Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment (or index) the annual payments of $5 for every man, woman and child as set out in Treaty 4 and Treaty 6 in order to offset the impacts of inflation and maintain the purchasing power thereof.	- Date Claim Filed: 2023/05/15 - Research Start Date : 2023/05/16

This is **Exhibit "D"** referred to in the

Affidavit of **MARIE-LAURANCE DAIGLE**

Affirmed before me remotely on August 14, 2024.

Schmiedendorf, Carling

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Report as of 2024/08/06

Specific Claims Branch
Status Report on Specific Claims

MANITOBA (1)

Claimant & Claim Name	Current Status & Description	Key Dates (yyyy/mm/dd)
Tootinaowaziibeeng Treaty Reserve (BAND-292)		
Treaty 4 Annuities Indexing	**Under Assessment** Date Research & Analysis started Alleges the Crown's failure to augment or increase the annual payments of $5 to each band member as set out in Treaty 4 for the purposes of offsetting the impacts of inflation and maintaining the purchasing power thereof.	- Date Claim Filed: 2024/06/10 - Research Start Date : 2024/06/11

This is **Exhibit "E"** referred to in the

Affidavit of **MARIE-LAURANCE DAIGLE**

Affirmed before me remotely on August 14, 2024.

Schmiedendorf, Carling

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SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES
Katherine Richard
Katherine Richard
Ottawa, ON | 1

SCT File No.: SCT - 5003 - 24

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

PASQUA FIRST NATION

Claimant

- and -

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

Respondent

DECLARATION OF CLAIM

Treaty 4 Annuities Indexation

(Rule 41 of the *Specific Claims Tribunal Rules of Practice and Procedure*)

This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure.*

____

Date

____

Registry Officer

TO: Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

Civil Litigation Section
Department of Justice Canada
50 O'Connor Street, 5th Floor.
Ottawa, Ontario K1A 0H8
Telephone: 613-670-6214
Fax: 613-954-1920

I. CLAIMANT (r. 41(a))

1. The Claimant, Pasqua First Nation, is a First Nation within the meaning of subsection 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c. 22 (the "*SCTA*"), by virtue of being a "band" within the meaning of the *Indian Act*, RSC 1985, c. I-5. The Pasqua Indian Reserve No. 79 is located east of Regina, Saskatchewan in the vicinity of Fort Qu'Appelle. The Pasqua people are of mixed Saulteaux-Cree ancestry.

II. CONDITIONS PRECEDENT (r. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the *SCTA* have been fulfilled:

> 16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and
>
> (a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

3. The First Nation submitted the *Pasqua First Nation Treaty 4 Annuities Indexing Specific Claim Submission* (the "Claim Submission") on March 30, 2022 regarding the Crown's failure to augment or increase the annual payments of $5 for every man, woman and child as set out in Treaty 4 (the "Annuity Payments") in order to offset the impacts of inflation and maintain the purchasing power thereof (the "Claim").

4. By letter dated November 30, 2022, Canada advised that early review of the Claim Submission had been completed and it had been determined that the Claim Submission met the Minimum Standard established by the Minister of Crown-Indigenous Relations pursuant to the *SCTA*. The Claim was filed with the Minister on September 20, 2022.

5. The Claimant entered into an engagement process with Crown Indigenous Relations and Northern Affairs Canada ("CIRNAC") in an attempt to resolve the Claim. To that end, CIRNAC requested a framework for negotiation and methodology which the Claimant submitted to CIRNAC on November 15, 2023.

6. On December 18, 2023, CIRNAC advised the Claimant that it did not currently have government direction to negotiate the Claim outside the Specific Claims Process. Further, on April 8, 2024, Deputy Minister of CIRNAC, Valerie Gideon, wrote to Chief Todd Peigan

and advised that "Canada does not have a mandate to negotiate the indexation of annuities with Pasqua First Nation." Deputy Minister Gideon's statement is tantamount to a written rejection of the Claim for negotiation in fulfilment of the condition precedent for filing a Declaration of Claim with the Specific Claims Tribunal (the "Tribunal") as set out in s. 16(1)(a) of the *SCTA*.

III. CLAIM LIMIT (*Act*, s. 20(1)(b))

7. For the purposes of this Claim, the Claimant does not seek compensation in excess of $150 million.

IV. GROUNDS (*Act*, s. 14(1))

8. The First Nation submits that the Claim falls within s. 14(1) of the *SCTA* 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: [...]
>
> **(a)** a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown; [...]
>
> **(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;

9. The Crown's failure to index the Annuity Payments to offset the impact of inflation and to maintain the purchasing power thereof has resulted in the erosion of the value of the Annuity Payments to the point of being worthless in breach of the Crown's legal obligation to provide "other assets under a treaty" pursuant to s. 14(1)(a). The Crown's failure to index the Annuity Payments constitutes a breach of its legal obligation with respect to its administration of "Indian moneys or other assets of a First Nation" pursuant to s. 14(1)(c).

10. The Specific Claims Branch took the position that the Claim fell outside the jurisdiction of the *SCTA* because the Specific Claims Process cannot be used to resolve Claims that are based on events that are less than 15 years old and forward looking. Section 15(1)(a) of the *SCTA* precludes the filing of a claim with the Tribunal that "is **based on events** that occurred within 15 years immediately preceding the date on which the claim was filed with the

Minister." The events at issue in this Claim date back to the signing of Treaty 4 and the Crown's failure to abide by and diligently implement the solemn promises exchanged in relation thereto, specifically the promise to maintain the real value of the Annuity Payments to address the impact of inflation and the erosion of purchasing power.

11. The alternative basis for liability is a breach of the Crown's fiduciary, honourable and equitable obligations on account of its failure to negotiate or include in Treaty 4, a provision requiring the Crown to augment, increase or index the Annuity Payments. With respect to either basis of liability, s. 15(1)(a) is not engaged and the Claim may be filed with the Tribunal.

V. ALLEGATIONS OF FACT (r. 41(e))

The Crown Sought to Enter Treaties Throughout the North-West Territories to Open Up Canada for Settlement, Immigration, Mining, Lumbering, Trading and Other Purposes

12. Pursuant to the *Rupert's Land and North-Western Territory Order* dated June 23, 1870, the North-West Territories (which included lands within the present-day province of Saskatchewan) were admitted into the Dominion of Canada on certain terms and conditions including, *inter alia*, the payment of £300,000 by the federal Crown to the Hudson's Bay Company.

13. The Indian signatories to the numbered Treaties faced an uncertain future in the time immediately prior to entering into treaty. The collapse of the traditional hunting economy based on the bison and the continued encroachment of European settlers had created a sense of urgency on the part of Bands to protect their interests. At the same time, the Crown sought to pave the way for future settlement of the west by acquiring (what it viewed as) legal title to large masses of land and reduce the threat of an uprising of the Indians through the making of Treaties.

14. Between 1871 and 1899, the Crown entered into Treaties 1 through 8 with various Indian Bands and Tribes (referred to hereinafter as "Treaty Bands" or "Bands") throughout the North-West Territories, which included present-day Saskatchewan, to open up the west for settlement, immigration, mining, lumbering, trading and other purposes. According to the

written terms of the Treaties, the Crown promised to provide specific benefits, including, *inter alia*, the payment of an initial present or gratuity, annuities, and reserves to be set aside for the exclusive use and benefit of Treaty Bands.

15. The Treaty negotiations were fraught with conflict, as the Bands were aware that the Crown had paid the Hudson's Bay Company (£300,000) for its interests in the vast territory of what was then referred to as Rupert's Land. The Bands vehemently argued that the lands belonged to them, and that the money should have been theirs. Chief Pasqua openly protested to the treaty commissioners, insisting the money should have been paid to the bands whose land it was. This confirms that the Bands and the Crown contemplated the payment of monetary compensation in exchange for rights to and interests in land.

16. Central to the negotiations for virtually all of the numbered Treaties were the assurances on the part of the Government that the Indian signatories would receive specific and enforceable Treaty benefits in exchange for their agreement to "cede" their collective rights and interests to a vast area of land. The Crown's promise to provide Treaty benefits to assist and support a sustainable future for the Bands in light of their rapidly changing circumstances was critical to their acceptance of Treaty.

17. The negotiation of Indian Treaties in Canada stretched over a period of over 200 years. While there are important differences between the Treaties, there is necessarily a unity to the Treaty process and the Crown intended to establish a clear set of terms with relative parity to ensure that all Bands were treated equitably and did not receive substantially more or substantially less than other signatories to other Treaties.

Pre-Confederation Treaties in Canada and the Origin of Annuity Payments

18. With the end of the Seven Years War in 1760, the practice of paying annuities to the Indians, sometimes in addition to presents, was adopted by the Crown as a means of securing the consent of the Indians to the land cession treaties. *The Royal Proclamation of 1763*, which protected Indian lands from encroachment by settlers by requiring that Indian lands had to first be surrendered to the Crown before they could be alienated, entrenched the process of treaty-making as the preferred means of ceding Aboriginal title to land. The special protection afforded to Indian lands by the *Royal Proclamation of 1763* constituted legal

recognition by the Crown of the collective rights held by the Indians in their lands giving rise to the requirement to compensate the Indians for the abrogation of those rights through the payment of a one-time lump-sum and later annuities in perpetuity.

19. The Selkirk Treaty of 1817, between Lord Selkirk and the Ojibwe, Cree and Assiniboine of the region within two miles on either side of the Red and Assiniboine Rivers in present-day Minnesota and Manitoba, included a provision that the Chiefs and warriors were to be paid annually "the present or quit rent consisting of two hundred pounds weight of good and merchantable tobacco" thereby equating the annuity with the amount of goods it could buy. This trend continued with a provisional agreement with the Chippewas of Lakes Huron and Simcoe in 1818 which provided the payment of a yearly sum to the collective of "twelve hundred pounds currency **in goods at the Montreal prices . . . as a full consideration for the Lands hereby sold and conveyed to His Majesty.**" The same wording, with minor differences, was used in subsequent agreements with the Mississauga of Credit River in October 1818 and Rice Lake in November 1818.

20. In none of the treaties concluded between 1818 and 1836 were any portion of annuities paid in cash. Rather, annuities were paid in the form of goods deemed essential to survival which linked the value of the annuities to sustaining the livelihood of the individual recipients and the collective as a whole.

21. The Robinson Treaties of 1850, negotiated by William Robinson with the Indians along Lakes Huron and Superior, "were the forerunners of the future treaties and shaped their course." In order to secure title to 33.5 million acres, Robinson offered the Indians £4,000 in cash and an annuity of £1,000 in perpetuity. In the final version of the Robinson Treaties, the lump sum payment had been reduced to £2,000 and the annuity to £500, however the written text of the treaties included an augmentation clause that promised an increase in the annuity in the event that the territory ceded produced an amount that enabled the Government of Ontario to augment the annuity without incurring loss.

22. The first and only augmentation to the annuities was made in 1875 when the Government of Canada, in response to years of demands from various Chiefs of the two territories, increased the annuities to £1 per capita which has been paid out to individuals on an annual

basis since that time. Further, in 1877, the Chiefs began petitioning for arrears of the increase to annuity payments for the period 1850-1874, arguing that economic circumstances had existed for many years prior to 1875 to justify this increase. Payment of arrears finally began in 1903.

23. While an equivalent augmentation clause was not included in any of the Numbered Treaties that followed the Robinson Treaties, the Crown was aware that it was not only just but necessary to increase the Annuity Payments in accordance with the amount of profit that the Crown derived from the territory ceded to fulfill its honourable obligations to its treaty partners.

Unity of the Terms of the Numbered Treaties

24. After Confederation in 1867, the payment of annuities remained a central feature of the Numbered Treaties negotiated with the Indians in the territory stretching from the Lake of the Woods to the eastern slopes of the Rocky Mountains.

25. Treaties 1 and 2 were the first Indian Treaties negotiated by the newly created Dominion of Canada at Fort Garry in 1871. Canada appointed the Lieutenant-Governor of Manitoba, Adams G. Archibald, and the Indian Commissioner, Wemyss M. Simpson, to negotiate the terms of the Treaties with the Cree and Saulteaux Indians to open up fertile agricultural lands in what is now southern Manitoba to settlement.

26. Significantly, a copy of the Robinson Treaties was provided to the Treaty Commissioners to guide them in their approach to treaty-making with the Indians. Moreover, while negotiating the terms of Treaty 1 in 1871, Lieutenant-Governor Archibald made an explicit promise to the Indians assembled at the Stone Fort that they would be treated in a similar manner to the Indians of the Robinson Treaties:

> Another thing I want you to think over is this: in laying aside these reserves, and in everything else that the Queen shall do for you, you must understand that she can do for you no more than she has done for her red children in the East. *If she were to do more for you that would be unjust for them. She will not do less for you because you are all her children alike, and she must treat you all alike.*

27. Treaty 1 was ratified in September of 1871 and Treaty 2 was signed on August 21, 1871 and ratified by Order in Council dated November 25, 1871. The written text of Treaties 1 and 2 demonstrates the intended and direct correlation between the value of the annuity provided for in the Treaty and its purchasing power:

> Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the district above described, distributing them in families, and shall in every year ensuing the date hereof (…) *pay to each Indian family of five persons the sum of fifteen dollars Canadian currency, or in like proportion for a larger or smaller family, such payment to be made in such articles as the Indians shall require or blankets, clothing, prints (assorted colors), twine or traps, at the current cost price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interests of Her Indian people, in cash.*

28. The option of providing the annuity in goods or cash demonstrates a link between the Numbered Treaties and the Pre-Confederation Treaties' purpose of furnishing the Indians with necessities for survival in the form of an annuity. It also links the value of the Annuity Payments with the purchasing power of same giving rise to an inherent treaty promise that the Annuity Payments will keep pace with the price of goods that those payments intend to supply.

29. Treaty 3 concluded in October, 1873. As with Treaties 1 and 2, of prime importance to the signatories to Treaty 3 was the need to ensure their economic subsistence and security through cash, clothing and materials which supported their livelihood. During the treaty negotiations, the Treaty 3 Chiefs argued for a higher annuity than the amount offered under Treaties 1 and 2 on the basis that the lands were more valuable. The Annuity Payments were seen by the parties as consideration for the land **and** the means to secure the future livelihood of the collective.

The Situation Prevailing when Treaty 4 was Signed

30. The historical events that were contemporaneous with the negotiation and signing of Treaty 4 inform the intentions of the parties with respect to the scope and meaning of the promise to provide Annuity Payments.

31. When Treaty 4 was negotiated in 1874, Chief Pasqua and his Band lived near Leech Lake, in what is now the province of Saskatchewan. Prior to Treaty 4, the Band depended primarily on bison with some Band members pursuing agriculture to a small degree.

32. Chief Sweetgrass, considered spokesman for the chiefs of the northern plains, expressed outrage at learning the lands occupied by the Indians had been "sold" without consent. In 1871, he informed Lieutenant Governor Adams Archibald as follows:

> *We heard that our lands were sold and we did not like it; we don't want to sell our lands; it is our property, and no one has a right to sell them.* Our country is getting ruined of fur-bearing animals, hitherto our sole support, and now we are poor and want help – we want you to pity us. *We want cattle, tools, agricultural implements, and assistance in everything when we come to settle – our country is no longer able to support us. Make provision for us against years of starvation.* We have had great starvation over the past winter, and the small-pox took away many of our people, the old, young, and children...We invite you to come and see us and to speak with us . . .

33. The Crown did not find disease and impending starvation sufficient to warrant entering into Treaty 4. Ultimately, it was the Crown's determination to expand settlement and to avoid an Indian war which precipitated Treaty 4 negotiations and on September 8, 1873, the North-West Council provided Lieutenant-Governor Morris with the mandate to negotiate the terms of Treaty 4. In doing so, the Council recommended including an annuity payment that terminated in 25 years and that the payments should be made in goods rather than cash.

Treaty 4 Negotiations and the Promise to Pay Annuities

34. Negotiations for Treaty 4 took place at Fort Qu'Appelle in September 1874. The treaty commissioners arrived at Qu'Appelle accompanied by a military escort of 113 men which had a threatening effect on the Indians gathered to negotiate a treaty. The negotiations themselves were protracted and fraught with conflict. Chief Pasqua protested to the treaty commissioners that the money paid to the Hudson's Bay Company for title to Rupert's Land should have gone to the Indians. Accordingly, the issue of monies owing for lands taken unlawfully was front of mind during negotiations.

35. With respect to the Annuity Payments, Treaty Commissioner Morris promised the Indian signatories that the Crown **"would like that you have some money every year to buy things that you need."** This promise was made in the context of the foreseeable demise of

the buffalo and the Crown's recognition of its honourable obligation to provide for the Bands and their descendants: "for you and for your children, and . . . for the children that are yet to be born." The Annuity Payments which consisted of "five dollars to every man, woman and child, as long as the sun shines and the water flows" were for the purpose of safeguarding the Indian signatories' livelihood and the livelihood of future generations in the face of new challenges and an uncertain future. The final provisions respecting presents and annuities in Treaty 4 read as follows:

> As soon as possible after the execution of this treaty, Her Majesty shall cause a census to be taken of all the Indians inhabiting the tract hereinbefore described, *and shall next year, and annually afterwards, forever, cause to be paid, in cash,* at some suitable season to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded; *each Chief, twenty-five dollars, each head man, not exceeding four to a band, fifteen dollars; and to every other Indian, man, woman and child, five dollars per head....*

36. Chief Pasqua, one of the original signatories to Treaty 4, entered into treaty on behalf of his Band at Qu'Appelle in the North-West Territories on September 15, 1874. Treaty 4 was entered into on behalf of Her Majesty the Queen in right of Canada by Alexander Morris, Lieutenant Governor of the North-West Territories; David Laird, Indian Commissioner; and William Joseph Christie. The promise to provide the Annuity Payments in support of the future livelihood of the Bands in changing circumstances was critical with respect to concluding the treaty.

37. One year after Chief Pasqua signed Treaty 4, Commissioners W. J. Christie and M. G. Dickieson met with Treaty 4 Indians at Qu'Appelle to make the first Annuity Payments and to take further adhesions to treaty from other Bands.

38. From that time forward, Pasqua has received Annuity Payments in cash in the amount of $5 per man, woman and child in proportion to the population of its members.

The Crown has Failed to Augment, Increase or Index the Annuity Payments in Breach of the Treaty and the Crown's Honourable and Fiduciary Obligations

39. In the 150 years since Chief Pasqua entered Treaty 4 with the Crown in 1874, the relative value of the Annuity Payments has decreased due to inflation to the point of rendering the Annuity Payments meaningless in terms of purchasing power.

40. The amount of the Annuity Payment has never been augmented, increased or indexed for the purposes of offsetting the impacts of inflation and maintaining the real value thereof.

VI. THE BASIS IN LAW ON WHICH THE CROWN IS SAID TO HAVE FAILED TO MEET OR OTHERWISE BREACHED A LAWFUL OBLIGATION

41. The Crown breached its treaty, fiduciary, honourable, legal and/or equitable obligations and the Honour of the Crown when it failed to increase, augment or index the Annuity Payments, as promised by the Crown under the terms of Treaty 4, in order to maintain the real value of the Annuity Payments and to implement the purpose and intention of the Treaty promise.

42. In the alternative (if the Crown did not have an ongoing obligation to increase, augment or index the Annuity Payments), the Crown breached its fiduciary duty, by failing to uphold the Honour of the Crown and/or committed equitable fraud when:

   a. The Crown fell below the standard of a fiduciary and acted in bad faith during the negotiations and the subsequent implementation of Treaty 4;

   b. The Governor-in-Council approved and consented to Treaty 4 on terms which were unconscionable, foolish, improvident, and otherwise amounted to exploitation;

   c. The Crown proceeded to implement Treaty 4 on terms that were unconscionable, foolish, improvident, and otherwise amounted to exploitation; and

   d. The Crown failed to diligently implement the terms of Treaty 4 in a uniform and equitable manner for all Treaty 4 Bands.

The Crown Breached its Treaty, Fiduciary, Honourable, Legal and/or Equitable Obligations and Failed to Uphold the Honour of the Crown

43. Treaty 4 is a source of enforceable rights which are recognized and constitutionally affirmed at Canadian law under section 35 of the *Constitution Act, 1982*.

44. It is well-established that the Honour of the Crown governs the interpretation of historic Treaties in a way that fulfils the intended purposes of Treaty and statutory grants, and assumes that the Crown always intends to fulfill its promises.

45. The Treaty-making process and the promises arising therefrom, which resulted in the Crown's taking of lands held pursuant to Aboriginal Title in exchange for certain promises, necessarily requires an interpretation of the Treaty that maintains fidelity to the spirit and intent of the Treaty. The Annuity Payment clause must be interpreted in a way that is consistent with, *inter alia*, the Nation-to-Nation relationship between the parties, the Honour of the Crown and the duty of diligent implementation, and the Crown's fiduciary duties.

46. The intention behind the Annuity Payment clause in Treaty 4 is clear: in exchange for the taking of vast traditional territories and natural resource wealth, the Crown was, in consideration, to provide the Annuity Payments to safeguard the livelihood of the signatories and subsequent generations in the face of new challenges and an uncertain future. When Treaty 4 was signed, the value of the Annuity Payment equated with a basket of goods premised upon sustaining each member of the collective. This value, or purchasing power, is inherent in the written promise and/or constitutes an implied term of the treaty. What the treaty signatories bargained for was a livelihood and not merely a trivial cash payment of merely symbolic value.

47. The Claimant asserts that, when properly interpreted according to the relevant interpretation principles, including the officious bystander test and the Honour of the Crown, Treaty 4 includes a promise to augment, increase or index the amount of the Annuity Payment from time to time.

48. The Claimant asserts that the Crown failed to fulfill its obligations to properly administer the Annuity Payments by failing to ever augment, increase or index the annual payments since entering into Treaty 4 with the Claimant in 1874. Over time, the relative value of the Annuity Payments has decreased due to inflation to the point of rendering the Annuity Payments meaningless in terms of purchasing power.

In the Alternative, the Federal Crown Breached its Fiduciary Duty, Failed to Uphold the Honour of the Crown and/or Committed Equitable Fraud at the Time of Treaty-making and by Proceeding to Implement the Treaty on Unconscionable Terms

49. The Crown recognized that it had an "obligation of honourable dealing" with Indigenous peoples as early as the *Royal Proclamation of 1763*. This obligation, which underpins the Honour of the Crown, "derives from the Crown's assertion of sovereignty in the face of prior Aboriginal occupation". The Honour of the Crown is always at stake in the Crown's dealings with Indigenous peoples. "A constitutional principle", the Honour of the Crown is a source of enforceable affirmative obligations which extends to the making and diligent implementation of Treaty 4.

50. Where the Crown assumes discretionary control over a specific or "cognizable" Aboriginal interest (such as Aboriginal Title), this gives rise to fiduciary duties on the part of the Crown. As a fiduciary, the Crown must act with utmost loyalty and cannot consent to any improvident bargain.

51. The Claimant asserts that the Crown's actions in failing to secure an explicit augmentation clause fell below the standard of a fiduciary, failed to uphold the Honour of the Crown, and/or amounted to bad faith during the negotiations of Treaty 4. The Robinson Treaties equipped the Crown with an awareness of the justice and the necessity of such a provision and by failing to explicitly include an augmentation clause in Treaty 4, the Crown engaged in sharp dealing. Further, by promising to treat the Indians in the North-West Territories in the same manner as the Indian signatories to the Robinson Treaties and then by failing to uphold that promise with respect to the inclusion of an augmentation clause, the Crown breached its fiduciary and honourable obligations.

52. The Claimant asserts that the Crown breached its fiduciary duty to Pasqua First Nation when it approved and consented to Treaty 4 on terms which were foolish, improvident, and otherwise amounted to exploitation.

53. The Claimant asserts that the Crown further breached its duties by continuing to implement the improvident bargain on unconscionable terms.

VII. RELIEF SOUGHT

54. The Claimant seeks the following relief:

a. A determination that Treaty 4 imposes an obligation on the Crown to increase the annual payment of $5 payable to each Treaty Indian "for ever", from time to time, to maintain the real value of the Annuity Payments and give effect to the purpose and intention of this Treaty promise in recognition of the signatories' right to its fair share of the revenues flowing from the Crown's taking up of the territory for settlement, immigration, mining, lumbering, trading and other purposes;

b. A determination that the Respondent has breached its Treaty, fiduciary, honourable, legal and/or equitable obligations and/or failed to uphold the Honour of the Crown when it failed to increase, augment or index the amount of the Treaty Annuities from $5 since 1874, the value of which has been seriously eroded due to inflation and the time value of money;

In the alternative:

c. A determination that the Respondent had a fiduciary duty to Pasqua First Nation in the negotiation and implementation of Treaty 4, which included the duty to act prudently, in good faith, with loyalty to the beneficiaries' interest, and to provide disclosure of the effects of inflation on the value of the Treaty Annuities which the Respondent breached when it failed to include in Treaty 4, a provision to augment, increase, or index the amount of $5 from 1874 to the present, to maintain the real value of the Annuity Payments which has been seriously eroded since the time of treaty;

d. A determination that the Respondent failed to uphold the Honour of the Crown and/or committed equitable fraud when the Governor-in-Council approved and consented to Treaty 4 on terms which were foolish, improvident, and otherwise amounted to exploitation;

c. A determination that the Respondent committed a further breach of its duties and obligations by failing to implement the terms of Treaty 4 in a uniform and equitable manner as compared to the signatories to the Robinson Treaties and with respect to the Governor-in-Council's consent and approval of said inequitable terms;

55. The remedy for which, includes but is not limited to:

a. Equitable compensation for the historic failure to increase or augment the Annuities Payment provision from time to time;

b. Costs to be awarded on a solicitor-client basis 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

c. Such other relief as counsel may advise and this Honourable Tribunal deems just.

Dated this July 23, 2024

Ron S. Maurice
Ryan M. Lake
Anjalika Rogers
Geneviève Boulay

Lawyers for the Claimant

Maurice Law Barristers & Solicitors
602 12th Avenue SW, Suite 100
Calgary, AB T2R 1J3
Tel: 403-266-1201
Fax: 403-266-2701
Email: rmaurice@mauricelaw.com
rlake@mauricelaw.com
arogers@mauricelaw.com
gboulay@mauricelaw.com

This is Exhibit "B" referred to in the Affidavit of

HEAVEN DESCHAMPS

Affirmed before me on this 1st day

of December, 2025

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Alberta

SCT File No.: SCT-5003-24

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

PASQUA FIRST NATION

Claimant

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA

as represented by the Minister of Crown-Indigenous Relations

Respondent

AFFIDAVIT OF MATTHEW TODD PEIGAN

Sworn on March 13, 2025

I, Matthew Todd Peigan, of Pasqua First Nation in the Province of Saskatchewan MAKE OATH AND SAY:

1. I am a member of and the former Chief of the Claimant, Pasqua First Nation, (hereinafter "Pasqua"). I am an "Indian" and Pasqua is a "band" within the meaning of the *Indian Act,* R.S.C 1985, c. I-5, as amended. Pasqua is a Saulteaux-Cree signatory and adherent Band to *Treaty No. 4*, *1874* ("Treaty 4").

2. On March 4, 2025, I concluded my 11th term as Chief of Pasqua. I was first elected as Chief in March of 1993, and served 4 consecutive terms until March of 2001 (8 years). I returned to my role as Chief in 2011 and have continued to serve in this role for the past 7, two-year terms (for a total of 14 years).

3. Pasqua leadership is elected by the membership and among its sacred responsibilities are the day-to-day engagement with the Crown and other governments, federal and provincial, as well as engaging with the Crown and Industry to address historic, emerging, and future issues concerning our Nation throughout its Treaty 4 territory, traditional lands and beyond.

4. Pasqua's work has been instrumental in representing the interests of all Treaty 4 Nations with respect to previous claims where the Crown has breached its promises under Treaty 4. For example, the settlement of Agricultural Benefits claims across Treaty 4 was a direct result of Pasqua's engagement and advocacy on behalf of the interests of all Treaty 4 First Nations and their members. These efforts resulted in a collaborative resolution to these claims with the Minister of Crown Indigenous Relations and Northern Affairs Canada ("CIRNAC").

5. Given the foregoing, I have personal knowledge of the facts and matters in this Affidavit, except where so stated to be based on information and belief, in which case I do verily believe the same to be true.

Preparation and Filing of the Pasqua Treaty Annuities Indexing Claim with the Specific Claims Branch

6. As Chief of Pasqua, I was closely involved with the preparation of the *Pasqua First Nation Treaty 4 Annuities Indexing Specific Claim Submission* (the "Claim Submission") which concerns the Crown's failure to augment or increase the annual payments of $5 for every man, woman and child as set out in Treaty 4 (the "Annuity Payments") in order to offset the impacts of inflation and maintain the purchasing power thereof (the "Claim"). The Claim Submission was submitted to the Specific Claims Branch on March 25, 2022. The March 25, 2022 letter is attached hereto as **Exhibit "A"**.

7. On May 16, 2022, I received a letter from Stefan Matiation, Director General, Specific Claims Branch, Resolution and Partnership Sector within CIRNAC acknowledging receipt of the Claim Submission and confirming that it would undergo an early review to determine if it meets the Minimum Standard, as required under the *Specific Claims Tribunal Act*. The May 16, 2022 letter is attached hereto as **Exhibit "B"**.

8. On November 30, 2022, I received a second letter from Mr. Matiation. In this letter I was advised that early review of the Claim Submission had been completed and the Claim was formally

filed with the Minister on September 20, 2022 but that *"Claims related to the indexation of treaty annuities are part of a larger issue involving the adjustment of periodic treaty benefits to reflect inflation. The Specific Claims Process is limited to addressing historical grievance and could not resolve issues which are less than 15 year old and forward-looking. Given the unique nature of your grievance, we are proposing an engagement process with CIRNAC to discuss the scope of the claim and a path towards resolution."* Mr. Matiation provided the contact for Julie Gaudreau-Cormier, a Senior Negotiator at CIRNAC and advised that she would reach out to me shortly to commence these discussions. The November 30, 2022 letter is attached hereto as **Exhibit "C"**.

9. My understanding of the November 30, 2022 letter is that the Specific Claims Branch rejected the Claim because its assessment determined that the Claim concerned "issues which are less than 15 year old and forward-looking" or alternatively the Claim was accepted for negotiation but that the Claim would be more appropriately handled within a "unique engagement process" within CIRNAC. It was not my understanding that the Minister decided the Claim would now proceed within two distinct processes, one within and one outside of the Specific Claims Branch.

Negotiation of the Pasqua Treaty Annuities Indexing Claim with CIRNAC

10. On July 5, 2023, I attended the opening meeting with Blake McLaughlin, Alexandra Fensome and Tammy Hannibal (the "CIRNAC Team"). Legal counsel for Pasqua was also present. At that meeting, I was advised that the CIRNAC Team included individuals who were also part of the team negotiating the Robinson Huron Treaty Annuities Indexing Claim which, like the Claim in this matter, involves the Crown's broken treaty annuities promise.

11. The stated purpose of July 5, 2023 meeting was to discuss the resolution of Pasqua's Claim. Neither Ms. Hannibal nor anyone else from the CIRNAC Team advised that they were in "listening mode" and that they did not have a mandate to resolve Pasqua's Claim. At no time was I advised that our discussions were something less than the beginning of the prospective negotiation of Pasqua's Claim nor did anyone from the CIRNAC Team advise that the Claim Submission would throughout this "unique engagement process" still be within a parallel assessment with the Minister or the Specific Claims Branch.

12. The CIRNAC Team requested any materials about the Claim that we felt would help them with their work and specifically suggested that Pasqua prepare a draft methodology and framework to guide our efforts towards the settlement of the Claim. With respect to the methodology and

framework, our discussions were broad based. It was suggested that we build parameters not only helpful for our Claim but to also consider a wider application across Treaty 4. We discussed the experience negotiating the Treaty 4, 5, and 6 Benefits Framework that was devised to resolve Treaty Benefits Claims in those Treaty areas and it was agreed that this was a good model.

13. Legal counsel for Pasqua advised that Pasqua had retained David Hutchings to provide expert assistance for valuation of the Claim and the CIRNAC Team advised that this was a welcome development as they had experience working with Mr. Hutchings in relation to the Robinson Huron Treaty Annuities Claim. Our respective teams also discussed the possibility of a global settlement of all of Pasqua's outstanding Specific Claims which the CIRNAC Team was receptive to and was aware were currently included within a comprehensive settlement proposal that had been tabled with CIRNAC.

14. At the conclusion of the meeting, the CIRNAC Team undertook to provide Pasqua with historical data that would be used for the draft methodology and framework for resolution. The CIRNAC Team was frank that something needed to be done to resolve the Treaty 4 Annuities Indexing claims and thanked us for our commitment to this effort. I understood this to mean that Canada acknowledged the validity of Pasqua's Claim and its obligation to Treaty 4 Nations to resolve these claims to reflect the exchange of solemn promises between the Crown and First Nations at the time of treaty.

15. Given the Director General's letter dated November 30, 2022, referring Pasqua's Claim to CIRNAC, I believed that Pasqua was engaged in a good faith negotiation with the CIRNAC Team. By all appearances and on the basis of statements made at the meeting by the CIRNAC Team, I had no reason to believe that the CIRNAC Team did not have a mandate to negotiate.

16. On July 6, 2023, legal counsel to Pasqua sent Mr. McLaughlin and Ms. Hannibal a copy of the Claim Submission which contained a list of the historical materials in Pasqua's possession and requested that the CIRNAC Team share the historical data in their possession as discussed. Counsel also advised that we were in the course of preparing the requested methodology and framework "to advance this matter with your Team." Counsel requested that the CIRNAC Team share the historical data as discussed. Attached hereto and marked as **Exhibit "D"** is a copy of legal counsel's email.

17. On August 3, 2023, legal counsel to Pasqua wrote to Ms. Hannibal in follow up. In response, Ms. Hannibal advised that "we are preparing some information to assist you and will follow up shortly." Attached hereto and marked as **Exhibit "E"** is a copy of the emails exchanged between legal counsel and Ms. Hannibal.

18. On August 25, 2023, I wrote to Ms. Hannibal, cc'ing legal counsel to Pasqua and reminded her that her team had promised to obtain and provide historical data to Pasqua. I asked Ms. Hannibal to advise as to a time frame for receiving this information. Attached hereto and marked as **Exhibit "F"** is a copy of my email to Ms. Hannibal.

19. At no point did anyone from the CIRNAC Team advise that they did not have a mandate to negotiate the Claim or that the Claim was under assessment with the Minister. No one from the Specific Claims Branch ever communicated that information to Pasqua. Based on our engagement with the CIRNAC Team, it remained my firm belief that we were negotiating the Claim with the CIRNAC Team. On that basis Pasqua retained a forensic accountant to assist with managing the analysis of population data the CIRNAC Team promised to provide and to aid in the preparation of the draft method and framework for resolution.

20. On September 5, 2023, Ms. Hannibal responded to my email of August 25, 2023. She advised that her team "has been preparing a package to share and assist you with your work" and that she would follow up with them "to ensure that the information you had requested is forwarded asap." Attached hereto and marked as **Exhibit "G"** is a copy of Ms. Hannibal's reply email.

21. On October 20, 2023 Shawn Allard, an Assistant Negotiator within Ms. Hannibal's team finally emailed me about providing Pasqua with at least some of the historical data that the CIRNAC Team had promised to provide at our first meeting on July 5, 2023. Attached hereto and marked as **Exhibit "H"** is a copy of the email.

22. Shortly thereafter, on November 15, 2023, legal counsel to Pasqua submitted the draft proposed method and framework for Treaty 4 Annuities (the "Proposed Method and Framework") to the CIRNAC Team and scheduled the next date to continue negotiations for December 18, 2023. The email and enclosed Proposed Method and Framework is attached hereto as **Exhibit "I"** and **Exhibit "J"**. The Introduction to the Proposed Method and Framework states that it is for the purpose of extra-judicial resolution of the Pasqua First Nation Treaty 4 Indexing Specific Claim Submission filed with the Minister on September 20, 2022. Further, the Proposed Method and

Framework proposes two phases to the resolution of the Claim, Phase I's focus being past compensation pertaining to the Crown's failure to fulfill the promise to maintain the value of the Treaty 4 Annuity promise for the period 1874 to 2024. Phase II was to be directed at future implementation of the promise.

23. No one from the CIRNAC Team and/or the Specific Claims Branch responded to legal counsel's November 15, 2023 email attaching the Proposed Method and Framework and scheduling the follow-up meeting for December 18, 2023.

24. On December 1, 2023 legal counsel to Pasqua wrote to the CIRNAC Team to advise that December 18, 2023 was no longer available for a meeting and suggesting December 20, 2023 as an alternate date. Attached as **Exhibit "K"** is a copy of the email chain.

25. On December 18, 2023, Ms. Hannibal responded that she and Blake McLaughlin were unavailable on December 20, 2023 but were available the week of January 8, 2024. In that email and for the first time, Ms. Hannibal took the position that "our department does not currently have government direction to negotiate Pasqua First Nation's claim outside of the existing Specific Claims process" and "Pasqua First Nation's specific claim, filed on September 20, 2022, is still within the three-year timeline for Canada to reach a decision to accept or not accept this claim for negotiation." Ms. Hannibal's December 18, 2023 email is part of Exhibit "K".

26. At no time prior to receiving Ms. Hannibal's December 18, 2023 email was I ever informed or made aware by Ms. Hannibal or by anyone else from her team that CIRNAC did not have a mandate to resolve the Claim and that the Claim was instead still being assessed by the Minister and was within the three-year time period set out in the *Specific Claims Policy and Process Guide*. It is my firmly held belief that the Claim had been referred to the CIRNAC Team for negotiation by the Specific Claims Branch on or around November 30, 2022 and that the CIRNAC Team had a mandate to resolve the Claim. On that basis it was my belief that the Specific Claims Branch had rejected the Claim on November 30, 2022 when they referred it to CIRNAC or alternatively had accepted the Claim for negotiation but referred the Claim to CIRNAC for that purpose. That belief was never contradicted by any of the communications exchanged between the parties prior to December 18, 2023.

27. In any event, it is the expectation of the parties that if the Minister changed his mind regarding Pasqua's Claim as detailed in the letter of November 30, 2022, a new decision would be issued by the Minister.

28. On December 20, 2023, legal counsel to Pasqua responded to Ms. Hannibal by stating that Mr. Matiation's correspondence of November 30, 2022 expressed the opinion that the Claim was not within the jurisdiction of the *Specific Claims Tribunal Act* and that "(t)he stated purpose of your proposed engagement with Pasqua is to determine whether we can find a unique path towards resolution." Legal counsel's email is part of Exhibit "K". The position of legal counsel reflects my understanding of the November 30, 2022 correspondence.

29. Ms. Hannibal never responded to legal counsel's email. Neither she nor any of her colleagues at CIRNAC disputed legal counsel's characterization of Mr. Matiation's November 30, 2022 correspondence.

30. On January 8, 2024, I attended a meeting with legal counsel and the CIRNAC Team. At that meeting Ms. Hannibal advised that the Proposed Method and Framework was under review. At the conclusion of the meeting, Ms. Hannibal proposed another session for the week of February 5, 2024. My notes from that meeting are attached hereto as **Exhibit "L"**.

31. On January 9, 2024, I wrote to Associate Deputy Minister of Indigenous Services Canada, Valerie Gideon, on behalf of Pasqua. In that letter, I clearly set out my understanding that Pasqua had met with Canada on July 5, 2023 for the purpose of resolving the Claim, that Pasqua had prepared the Proposed Method and Framework and provided it to the CIRNAC Team on November 15, 2023 and that we met with them on January 8, 2024 to continue our discussion. I further advised that a meeting was planned for the week of February 5, 2024. The letter included the "Framework for Negotiation" which set out the proposed two-phase approach to resolving the Claim as discussed above. My letter to Associate Deputy Minister Gideon is attached hereto as **Exhibit "M"**.

32. On February 7, 2024, Ms. Hannibal emailed Pasqua's counsel and asked to reschedule our meeting to the following week. Attached hereto as **Exhibit "N"** is a copy of Ms. Hannibal's email.

33. On February 13, 2024, I attended a brief phone call with Ms. Hannibal and Pasqua's legal counsel. Nothing of substance was discussed on this call. A follow-up meeting for March 28, 2024 was scheduled. My notes of the brief phone call are attached hereto as **Exhibit "O"**.

34. On March 28, 2024, Ms. Hannibal rescheduled our meeting to April 22, 2024. Attached hereto and marked as **Exhibit "P"** is a copy of Ms. Hannibal's email rescheduling the meeting.

35. On April 1, 2024, counsel reiterated CIRNAC Team's timeline for response to the Proposed Method and Framework. Attached hereto and marked as **Exhibit "Q"** is a copy of counsel's email to the CIRNAC Team.

Rejection of the Claim by Deputy Minister Valerie Gideon

36. On April 8, 2024, Valerie Gideon, who was now Deputy Minister of CIRNAC, communicated the Minister's decision to end negotiations with Pasqua. Attached hereto and marked as **Exhibit "R"** is a copy of the Deputy Minister's letter.

37. The Deputy Minister's letter stated that "Canada does not have a mandate to negotiate the indexation of annuities with Pasqua First Nation." I understood this to mean that Canada was refusing to continue negotiations of the Claim and therefore the Claim was again rejected and Pasqua's recourse was to file a Declaration of Claim with the Specific Claims Tribunal which Pasqua did on July 24, 2024.

38. I am aware that Canada has brought a motion to strike the Declaration of Claim on the basis that the Claim Submission has not been accepted or rejected for negotiation by the Minister. It is my firm belief that the Claim was either rejected on November 30, 2022 when Mr. Matiation referred Pasqua to a negotiator within CIRNAC to resolve the Claim or on April 8, 2024 when Deputy Minister Gideon wrote to me and advised that Canada did not have a mandate to negotiate the Claim.

39. Between November 30, 2022 and December 18, 2023, I was led to believe that Canada had a mandate to resolve the Claim and that the Specific Claims Branch was no longer involved in the Claim. At no time did anyone from CIRNAC dispute this understanding or state otherwise. As such, Pasqua negotiated the Claim in good faith on the basis of a mutual understanding that the Claim would be resolved by the CIRNAC Team.

CIRNAC's Settlement of other Treaty Annuities Indexing Claims

40. I am member of the Lands and Title Committee of the Federation of Sovereign Indigenous Nations ("FSIN"). At a meeting on or about January 28, 2025, I was made aware that Canada settled at least one Treaty Annuities Indexing Specific Claim in Treaty 8. In or about June of 2024, Black Lake First Nation settled their Treaty Annuities Indexing Claim with Canada through a process within CIRNAC, involving officials from the SCB or TAG or both.

41. I make this Affidavit in response to Canada's motion to strike the Declaration of Claim and for no other purpose.

SWORN BEFORE ME
at Pasqua First Nation, Saskatchewan
this 13th day of March, 2025.

Commissioner for Oaths for Saskatchewan
Being a Solicitor
~~My appointment expires~~ ________
~~(Seal)~~

Matthew Todd Peigan

This is Exhibit "A" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a solicitor

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"Without Prejudice"

March 25, 2022

Specific Claims Branch
Aboriginal Affairs and Northern Development Canada
Les Terrasses de la Chaudière
10 Wellington Street, Room 1660
Gatineau, Quebec
K1A 0H4

Attention: Director General, Specific Claims Branch

RE: ***Pasqua First Nation Treaty 4 Annuities Indexing - Specific Claim Submission***

On behalf of *Pasqua First Nation,* we are submitting to the Specific Claims Branch a USB stick containing the following:

1. The *Pasqua First Nation Treaty 4 Annuities Indexing Specific Claim Submission,* dated March 25, 2022;
2. A Research Report titled "Research Report: The Origin, use, and Purpose of Treaty Annuities", by Havlik Metcs Limited, dated April 2013, with a corresponding document index and document collection;
3. A supplemental document collection of archival documents used in support of the Claim and a corresponding index setting out the document numbers, dates and archival references where applicable;
4. Band Council Resolution.

Please note that legal counsel is submitting the enclosed USB strictly on a "without prejudice basis" and reserves the right to submit additional materials as they become available to counsel.

If you have any questions or concerns with respect to the foregoing, please do not hesitate to contact our office.

Sincerely,

MAURICE LAW

Per: ______________________
Steven Carey

This is Exhibit "B" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

Crown-Indigenous Relations and Northern Affairs Canada | Relations Couronne-Autochtones et Affaires du Nord Canada

WITHOUT PREJUDICE

May 16, 2022

Chief Matthew Peigan
Pasqua First Nation
P.O. BOX 79
PASQUA SK S0G 5M0

Dear Chief Peigan:

I am writing to acknowledge receipt of the Pasqua First Nation's Treaty 4 Annuities Indexing specific claim submission which was received on March 30, 2022. The claim submission will undergo an early review to determine if it meets the Minimum Standard, as required under the *Specific Claims Tribunal Act.*

The early review process will be completed within six months of the date the claim submission was received. Once this early review process is completed, you will be informed whether the claim submission has been filed with the Minister of Crown-Indigenous Relations.

The Minimum Standard can be found at the following webpage: https://www.rcaanc-cirnac.gc.ca/eng/1100100030303/1539617885830.

Should you have questions about the process or wish to discuss your submission, please contact Marie-Laurence Daigle, Director, Research and Assessment, marie-laurence.daigle@rcaanc-cirnac or 613-698-0776.

Please note that this notice is written on a "without prejudice" basis and should not be considered as an admission of fact or liability by the Crown.

.../2

Canada

Please be advised, as well, that our government files are subject to the *Access to Information Act* and the *Privacy Act.*

Sincerely,

Stefan Matiation
Director General
Specific Claims Branch
Resolution and Partnerships Sector

c.c.: Steven Carey, Maurice Law

This is Exhibit "C" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

Crown-Indigenous Relations and Northern Affairs Canada | Relations Couronne-Autochtones et Affaires du Nord Canada

WITHOUT PREJUDICE

November 30, 2022

Chief Matthew Peigan
Pasqua First Nation
P.O. BOX 79
PASQUA SK S0G 5M0

Dear Chief Peigan:

I am writing to advise you that the early review of the Treaty 4 Annuities Indexation claim submission, which was received from the Pasqua First Nation on March 30, 2022, has been completed. It has been determined that the claim submission meets the Minimum Standard established by the Minister of Crown-Indigenous Relations pursuant to the *Specific Claims Tribunal Act* and which is set out in the Specific Claims Policy and Process Guide. The claim was filed with the Minister on September 20, 2022.

Claims related to the indexation of treaty annuities are part of a larger issue involving the adjustment of periodic economic treaty benefits to reflect inflation. The Specific Claims Process is limited to addressing historical grievance and could not resolve issues which are less than 15 year old and forward-looking. Given the unique nature of your grievance, we are proposing an engagement process with CIRNAC to discuss the scope of the claim and a path toward resolution. Julie Gaudreau-Cormier, Senior Negotiator, will reach out to you shortly to organize a discussion. In the meantime, you can contact her at julie.gaudreaucormier2@rcaanc-cirnac.gc.ca.

Please be advised that this letter is written on a "without prejudice" basis. In the event this claim becomes subject to litigation, the government reserves the right to plead all defenses available to it including technical defenses such as limitation periods, strict rules of evidence or the doctrine of laches.

.../2

Canada

Please be advised, as well, that Government of Canada files are subject to the *Access to Information Act and the Privacy Act*.

Sincerely,

Stefan Matiation
Director General
Specific Claims Branch
Resolution and Partnerships Sector

c.c.: Steven Carey, Maurice Law

This is Exhibit "D" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 20

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers; Kelley Humber; Garrett Lafferty
Subject: FW: Pasqua Treaty Indexation
Date: February 28, 2025 11:36:37 AM
Attachments: Pasqua Treaty Annuities Claim Submission 2022-03-25 - FINAL.pdf

---

From: Ryan Lake
Sent: July 6, 2023 10:47 AM
To: McLaughlin, Blake <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Hannibal, Tammy <Tammy.Hannibal@sac-isc.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Geneviève Boulay <GBoulay@mauricelaw.com>; Lilli Carson <LCarson@mauricelaw.com>; Kelsey Gabel <KGabel@mauricelaw.com>
Subject: Re: Pasqua Treaty Indexation

Good morning,

Thank you again for the productive meeting. Please find attached the Specific Claim Submission filed with the Minister. As promised, we are now in the course of preparing methodology and framework to advance this matter with your Team.

I do not have your other colleagues email address so please loop her in. Otherwise, kindly share the population data you have as discussed.

From: Lilli Carson <LCarson@mauricelaw.com>
Sent: Wednesday, July 5, 2023 11:37 AM
To: Ryan Lake <rlake@mauricelaw.com>
Subject: RE: Pasqua

Here you go

Lilli

Lilli Carson
Research Director
Maurice Law Barristers & Solicitors
403.266.1201 ext. 225

This is Exhibit "E" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
a Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers; Kelley Humber; Garrett Lafferty
Subject: FW: Pasqua Treaty Indexation
Date: February 28, 2025 11:38:12 AM

From: Hannibal, Tammy <Tammy.Hannibal@sac-isc.gc.ca>
Sent: August 3, 2023 2:05 PM
To: Ryan Lake <rlake@mauricelaw.com>; McLaughlin, Blake <Blake.McLaughlin@rcaanc-cirnac.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Geneviève Boulay <GBoulay@mauricelaw.com>; Lilli Carson <LCarson@mauricelaw.com>; Kelsey Gabel <KGabel@mauricelaw.com>; Fensome, Alexandra <Alexandra.Fensome@rcaanc-cirnac.gc.ca>; Kaazan, Stacey <stacey.kaazan@rcaanc-cirnac.gc.ca>
Subject: RE: Pasqua Treaty Indexation

Good afternoon Ryan,
Thanks for the reminder – we are preparing some information to assist you and will follow up shortly.

Please do not hesitate in the interim to reach out if you have any additional questions.

Tammy

Tammy Hannibal *(she/her/elle)*

Director, Prairie Negotiations / Directrice, Négociations des Prairies
Negotiations-Central Branch / Direction générale Négociations-Centre
Treaties and Aboriginal Government / Traités et gouvernement autochtone
Crown Indigenous Relations and Northern Affairs Canada / Relations Couronne-Autochtones et des Affaires du Nord Canada
tammy.hannibal@canada.ca/ Tel: 204-891-9534

From: Ryan Lake <rlake@mauricelaw.com>
Sent: Thursday, August 3, 2023 1:57 PM
To: McLaughlin, Blake <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Hannibal, Tammy <Tammy.Hannibal@sac-isc.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Geneviève Boulay <GBoulay@mauricelaw.com>; Lilli Carson <LCarson@mauricelaw.com>; Kelsey Gabel <KGabel@mauricelaw.com>
Subject: RE: Pasqua Treaty Indexation

Good morning,

I am following up on your offer to share some additional population data that you may have.

Thank you

From: Ryan Lake
Sent: Thursday, July 6, 2023 10:47 AM
To: McLaughlin, Blake <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Hannibal, Tammy <Tammy.Hannibal@sac-isc.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Geneviève Boulay <GBoulay@mauricelaw.com>; Lilli Carson <LCarson@mauricelaw.com>; Kelsey Gabel <KGabel@mauricelaw.com>
Subject: Re: Pasqua Treaty Indexation

Good morning,

Thank you again for the productive meeting. Please find attached the Specific Claim Submission filed with the Minister. As promised, we are now in the course of preparing methodology and framework to advance this matter with your Team.

I do not have your other colleagues email address so please loop her in. Otherwise, kindly share the population data you have as discussed.

From: Lilli Carson <LCarson@mauricelaw.com>
Sent: Wednesday, July 5, 2023 11:37 AM
To: Ryan Lake <rlake@mauricelaw.com>
Subject: RE: Pasqua

Here you go

Lilli

Lilli Carson
Research Director
Maurice Law Barristers & Solicitors
403.266.1201 ext. 225

This is Exhibit "F" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
or Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers; Garrett Lafferty; Kelley Humber
Subject: FW: July 5th meeting follow up.
Date: February 28, 2025 11:44:40 AM

From: Chief Todd Peigan <mtpeigan@pasquafn.ca>
Sent: August 25, 2023 9:36 AM
To: Tammy.Hannibal@sac-isc.gc.ca
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Ryan Lake <rlake@mauricelaw.com>
Subject: July 5th meeting follow up.

Good Morning Ms. Hannibal

As per our meeting of July 5, 2023. Your dep't was to follow-up in obtaining and providing Pasqua First Nation membership listing for each year from 1956 to current.

Please advise as to time frames in receiving this information.

Thank You,
Chief Matthew T Peigan
Pasqua First Nation #79
Cell: 306-331-7180
Office: 306-332-5697

Sent from: Samsung S22 Ultra 5G

This is Exhibit "G" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers; Garrett Lafferty; Kelley Humber
Subject: FW: July 5th meeting follow up.
Date: February 28, 2025 11:46:28 AM

From: Hannibal, Tammy <Tammy.Hannibal@sac-isc.gc.ca>
Sent: September 5, 2023 8:17 AM
To: Ryan Lake <rlake@mauricelaw.com>; Chief Todd Peigan <mtpeigan@pasquafn.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Lilli Carson <LCarson@mauricelaw.com>
Subject: RE: July 5th meeting follow up.

Good Morning Chief Peigan,
It was very nice to meet you at the beginning of the summer. I hope you are keeping well and not too affected by the smoke (I'm in Treaty 2 Territory this week and it's very hazy here).
Our team has been preparing a package to share and assist you with your work, and I will follow up with them to ensure that the information you had requested is forwarded asap.

And Ryan, thank you for connecting Lilli – we will make sure she is copied on our outgoing.
Tammy

Tammy Hannibal *(she/her/elle)*

Director, Prairie Negotiations / Directrice, Négociations des Prairies
Negotiations-Central Branch / Direction générale Négociations-Centre
Treaties and Aboriginal Government / Traités et gouvernement autochtone
Crown Indigenous Relations and Northern Affairs Canada / Relations Couronne-Autochtones et des Affaires du Nord Canada
tammy.hannibal@canada.ca/ Tel: 204-891-9534

From: Ryan Lake <rlake@mauricelaw.com>
Sent: Monday, August 28, 2023 1:57 PM
To: Chief Todd Peigan <mtpeigan@pasquafn.ca>; Hannibal, Tammy <Tammy.Hannibal@sac-isc.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Lilli Carson <LCarson@mauricelaw.com>
Subject: RE: July 5th meeting follow up.

Tammy,

I am linking Lilli into this chain so she can be alerted when these materials arrive.

From: Chief Todd Peigan <mtpeigan@pasquafn.ca>
Sent: Friday, August 25, 2023 9:36 AM

To: Tammy.Hannibal@sac-isc.gc.ca
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Ryan Lake <rlake@mauricelaw.com>
Subject: July 5th meeting follow up.

Good Morning Ms. Hannibal

As per our meeting of July 5, 2023. Your dep't was to follow-up in obtaining and providing Pasqua First Nation membership listing for each year from 1956 to current.

Please advise as to time frames in receiving this information.

Thank You,
Chief Matthew T Peigan
Pasqua First Nation #79
Cell: 306-331-7180
Office: 306-332-5697

Sent from: Samsung S22 Ultra 5G

This is Exhibit "H" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers; Kelley Humber
Subject: FW: Sharing of Treaty Payment Lists - Pasqua First Nation
Date: March 11, 2025 8:34:27 AM
Attachments: abt_aandc_prnt_10-513_1632514851926_eng (2).pdf
Generic Language for TPL 8(2)(k) - Request Form.docx

From: Allard, Shawn <Shawn.Allard@rcaanc-cirnac.gc.ca>
Sent: October 20, 2023 7:27 AM
To: Ryan Lake <rlake@mauricelaw.com>; mtpeigan@pasquafn.ca; Ron S. Maurice <rmaurice@mauricelaw.com>; Lilli Carson <LCarson@mauricelaw.com>
Cc: Hannibal, Tammy <Tammy.Hannibal@rcaanc-cirnac.gc.ca>; Fensome, Alexandra <Alexandra.Fensome@rcaanc-cirnac.gc.ca>; Kaazan, Stacey <stacey.kaazan@rcaanc-cirnac.gc.ca>
Subject: Sharing of Treaty Payment Lists - Pasqua First Nation

Hello Chief Peigan,

My name is Shawn Allard and Tammy Hannibal has requested that I get in touch with you regarding aiding your information requests for Treaty Paylists as a follow up from the meeting earlier this summer. I have attached to this email the 8(2)(k) form that needs to be submitted along with some generic wording about the request that has been pre-approved by Access to Information and Privacy (ATIP) that can be input into the form should you wish to use it.

We are now able to share a formal process for the sharing of Treaty Payment Lists. Attached to this email is the form that needs to be submitted along with instructions for completing the form. The form requires edit PDF software to add text boxes. The process for receiving the documents is as follows:

1. Complete the attached 8(2)(k) template form.
    a. The researcher completes their Name/Address/Affiliation(firm or research company) and Nature of research (specific claim) section.
    b. Complete Researcher's undertaking with suggested language provided in the attached Word document. Please choose and complete the wording that is relevant to your request and delete the non-relevant wording.
    c. Check the authorization box and attach the BCR
    d. Read the undertakings and sign

2. Provide along with the completed 8(2)(k) form a BCR indicating quorum and giving authority to the researcher, who should be named on the BCR. If the researcher is not named on the BCR, confirmation of their retention and that they have provided an undertaking that they will not use the information for any other purposes will need to be received in writing, as per section 1.6 of the negotiation protocol agreement. The

BCR should indicate:

a. The name of the negotiations this information is be requested as part of;
b. A statement that the First Nation has retained and authorized the researcher (by name) /research company (by name), as well as any details, such as:
    i. Timeline of authorization to conduct research
    ii. What is expected of the research (e.g. a report, general research, etc...)

The completed 8(2)(k) form along with BCR can be sent to myself, or directly to ATIP at : upvp-ppu@sac-isc.gc.ca I would suggest if you send the form directly to ATIP to cc myself or let me know that the form has been submitted, as I will ensure that the form is received quickly by ATIP reviewers. If you choose to use the generic suggested wording that has been provided, review can be expedited. Once approved by ATIP you will be put in touch with someone at Indigenous Services Canada who will work with you to fulfill the request.

Please don't hesitate to let me know if you have any questions about the form or the process.

Sincerely,

Shawn Allard *(he/him/il)*
A/ Assistant Negotiator / Négociateur adjoint
Prairie Negotiations / Négociations des Prairies
Negotiations-Central Branch / Direction générale Négociations-Centre
Treaties and Aboriginal Government / Traités et gouvernement autochtone
Crown Indigenous Relations and Northern Affairs Canada / Relations Couronne-Autochtones et des Affaires du Nord Canada
604-367-8519

I acknowledge the land that I live, work, learn and play on is within the ancestral, traditional and unceded territories of the Coast Salish peoples, Xʷməθkʷəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish) and səl̓ilwətaʔɬ/sel̓íl̓witulh (Tsleil-Waututh).

This is Exhibit "I" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

From:	Ryan Lake
Sent:	Wednesday, 15 November 2023 9:52 AM
To:	McLaughlin, Blake; Hannibal, Tammy
Cc:	Ron S. Maurice; Chief Todd Peigan; Daigle, Marie-Laurence; Kelsey Gabel
Subject:	Pasqua's Treaty 4 Annuities Real Value Claim
Attachments:	2023-11-15 Pasqua Treaty Annuities Framework for Resolution.pdf

Good morning,

Please find attached the requested proposed framework for the formalization of this extra-judicial process.

We propose resuming these discussions on December 18, 2023.

Please advise of your availability.

Best regards,

Ryan M. Lake
Partner
Maurice Law, Barristers & Solicitors
Suite 300, 602 - 12th Avenue S.W.
Calgary, AB T2R 1J3
Telephone: 403.266.1201
Cellular: 647.982.1867
Facsimile: 403.266.2701
VANCOUVER | CALGARY | EDMONTON | SASKATOON | WINNIPEG | TORONTO | OTTAWA

This is Exhibit "J" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
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Ryan M. Lake
Direct Line: (403) 266-1201 X236
Cellular: (647) 982-1867
Email: rlake@mauricelaw.com

"Without Prejudice"

Date November 15, 2023

Department of Justice Canada
Prairie Region –Saskatoon Office
10th Floor, 123 –2nd Avenue South
Saskatoon, SK, S7K7E6

Via Email

RE: Pasqua First Nation's Treaty 4 Annuities Real Value Claim

---

Further to our opening discussion on July 5, 2023, and Canada's request for Pasqua First Nation to build a framework for negotiation, the following is a proposal to formalize the process outlined in your letter of November 30, 2022, thereby establishing a framework for the extra-judicial resolution of the Pasqua First Nation Treaty 4 Annuities Indexing Specific Claim Submission filed with the Minister on September 20, 2022.

Historical and Legal Basis of Pasqua's Treaty 4 Annuities Real Value Claim

<u>*Restoule v Canada (Attorney General)*</u>

Negotiated and signed in 1850, the Robinson Huron and Robinson Superior Treaties (the "Robinson Treaties") provided for the extinguishment of Indian title over a large portion of northern Ontario. In addition to promises of continued hunting and fishing rights, the Crown paid a lump sum up front and promised to make an annual payment to the Anishinaabe. In 1850, the beneficiaries received approximately $1.60-$1.70 per person, depending on whether they were a beneficiary of the Robinson-Huron or the Robinson-Superior Treaty. These Treaties expressly provided the augmentation clause linked to revenues from the territory. In 1875, the annuities under both Treaties were increased to $4 per person. This was the first and only time the annuities under either Treaty were increased. To this day, members of the Robinson-Huron and Robinson-Superior Treaties receive $4 per year.

In Stage 1 of this proceeding, the trial judge concluded that the Treaties were a collective promise to share revenue from the territory. The Court held that the Crown has a mandatory and reviewable obligation to increase the annuities. In carrying out its obligations, the Court held that the Crown must engage in a consultative process to determine whether the annuities can be increased without incurring loss. Further, the trial judge held that the reference to $4 in the augmentation clause applied only to the amount that could be distributed to individuals and did not limit the total collective annuity. She concluded that the Treaties required the Crown to diligently implement the purpose of the promise.

In Stage 2, the trial judge concluded that the Plaintiffs' claims were not barred by either (i) Crown immunity or (ii) provincial legislation that sets limitation periods within which certain types of claims must be brought.

This decision was upheld by the Ontario Court of Appeal.

Treaty 4

Courts have consistently recognized that the Robinson Treaties served as the model for the subsequent numbered Treaties. Notably, the formal instructions to Crown negotiators of several of the numbered Treaties included copies of the Robinson Treaties as guides for the negotiations.[1] Courts interpreting the numbered Treaties have explicitly referred to and relied on the Robinson Treaties. For example, in *Lac La Ronge Indian Band v Canada*, the Court of Appeal for Saskatchewan held: "The Robinson Treaties served as the model for the numbered treaties... In order to understand the historical context and put the negotiation process in proper perspective, one must examine the treaties negotiated prior and subsequent to Treaty No. 6 the starting point is the Robinson Treaties of 1850...".[2]

Since 1874, the Crown has an ongoing obligation to increase the annual payment of $5 payable to each Treaty Indian "for ever" (the "Treaty Annuities" or "Annuity Payments") as promised by the Crown under the terms of Treaty 4 to maintain the real value of the Annuity Payments and the effect of this promise to the Treaty 4 Indian Bands in exchange for the extinguishment of Indian title to the Treaty 4 area.

From the time when Treaty 4 was entered into, the Crown has declined or failed to augment or increase the annual payments of $5 to each Indian person as set out in Treaty 4 for the purposes of offsetting the impacts of inflation and maintaining the purchasing power.

The Crown's failure to diligently implement this promise is a breach of Treaty and its fiduciary obligation to Treaty 4 First Nations.

Context and Negotiation of Treaty 4

Immediately prior to the negotiation of Treaty 4, the Indians of the North-West faced a very uncertain future. The collapse of the bison economy and the introduction of disease coupled with increasing pressure from non-Indigenous settlers and the furtherance of competing interests created a sense of urgency on the part of the bands to enter into treaties to protect their chances for survival. For its part, the Crown was concerned with reducing the threat of an Indian uprising and paving the way for future settlement of the west.

Indeed, sickness and the impending extermination of the buffalo posed an existential threat which prompted the Indians' urgent requests to treat with the Crown. In 1869-1870, an outbreak

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[1] *Lac La Ronge Indian Band v Canada*, 2001 SKCA 109 at paras 14, 19, 23, 65-68, 87, 149.

[2] *Lac La Ronge Indian Band v Canada*, 2001 SKCA 109 at paras 19, 65, SCC leave to leave refused [2001] SCCA No 647. See also e.g. *Buffalo v Canada*, 2005 FC 1622 at para 262 ("Professor Ray wrote that Canada's treaty officials operated on the basis of established treaty-making practices, using the Robinson accords and Treaties 1 through 3 as the crucial blueprint"); *Ermineskin v Canada*, 2005

of smallpox occurred in the western interior, spreading rapidly from the Blackfoot in southern Alberta to the Cree and Assiniboine to the north and east. This epidemic cost the lives of roughly 10 percent of the Indian population. Ultimately, it was Ottawa's determination to expand settlement and to avoid an Indian war which led Canada into the Treaty 4 negotiations.

When Treaty 4 was negotiated in 1874, Chief Pasqua and his Band lived near Leech Lake, Saskatchewan. Prior to Treaty 4, the Band depended primarily on bison with some Band members pursuing agriculture to a small degree. The negotiation of Treaty 4 was fraught with conflict. Treaty 4 bands were aware that the Crown had paid the Hudson's Bay Company £300,000 for its interests in the vast territory of Rupert's Land. The bands considered the lands as belonging to them arguing vehemently that the money should have been theirs. Chief Pasqua openly protested to the treaty commissioners, insisting the money should have been paid to the bands whose land it was. Clearly, at the time of negotiation the concept of payment in money for land rights was within the contemplation of the Indians and their leaders.

After the protracted negotiations, Chief Pasqua was one of the original signatories to Treaty 4 signing on behalf of his Band at Qu'Appelle in the North-West Territories on September 15, 1874. Treaty 4 was signed on behalf of Her Majesty the Queen in right of Canada ("the Crown") by Alexander Morris, Lieutenant Governor of the North-West Territories; David Laird, Indian Commissioner, and William Joseph Christie.

According to the written terms of the treaty, the Indians agreed to "cede, release, surrender and yield up to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges whatsoever, to the lands included" within the area of roughly 75,000 square miles described in Treaty 4.[3] In exchange, the Crown undertook to provide specific and enforceable treaty benefits to Treaty 4 bands. The promise to provide treaty benefits in support of the future livelihood of the bands in changing circumstances was critical with respect to concluding the treaty.

Specific to the subject matter of the Claim, Treaty 4 provides for two separate, direct payments to the Indians – the first a one-time cash present akin to a signing bonus, and the second an annual cash payment to be paid in perpetuity. For ease of reference, the relevant terms contained in Treaty 4 respecting these payments are as follows:

> In view of the satisfaction with which the Queen views the ready response which Her Majesty's Indian subjects have accorded to the invitation of her said Commissioners to meet them on this occasion; and also in token of their general good conduct and behavior, She hereby, through Her Commissioners, makes the Indians of the bands here represented, a present – For each Chief, of twenty-five dollars in cash, a coat, and a Queen's silver medal; for each headman, not exceeding four in each band, fifteen dollars in cash, and a coat; and for every other man, woman and child, twelve dollars in cash;
>
> ...
>
> As soon as possible after the execution of this treaty, Her Majesty shall cause a census to be taken of all the Indians inhabiting the tract herein-before described, <u>and shall next year,</u>

[3] Alexander Morris, *The Treaties of Canada with the Indians of Manitoba, the North-West Territories and Keewa-tin* (Toronto: Belfords, Clarke & Col, 1880), 331. Notwithstanding that this clause in Treaty 4 purports to extinguish Aboriginal title to the land, First Nations' elders have consistently maintained that this was not the Indians' understanding of the treaty. According to the Elders, oral history and tradition confirms that the Indians did not agree to sell or surrender their rights to the land; rather, the true spirit and intent of Treaty 4 was that the Indians agreed to share the land with the Queen. However, for the purposes of the Claim, the First Nation does not intend to challenge the view that Aboriginal title to the land was extinguished by Treaty 4.

> and annually afterwards, forever, cause to be paid, in cash, at some suitable season to be duly notified to the Indians, and at a place or places to be appointed for the purpose within the territory ceded; each Chief, twenty-five dollars; each head man, not exceeding four to a band, fifteen dollars; and to every other Indian, man, woman or child, five dollars per head; such payment to be made to the heads of families for those belonging thereto, unless for some special reason, it is found to be objectionable.[4]

One year after the Pasqua Band signed Treaty 4, Commissioners W. J. Christie and M. G. Dickieson met with Treaty 4 Indians at Qu'Appelle to make the first Annuity Payments and take further adhesions to treaty of other bands. From that time forward, the Band has received Annuity Payments in cash in the amount of $5 per man, woman and child in proportion to the population of its members.

Building on its predecessors, the negotiation of Treaty 4 clearly demonstrates that the Annuity Payments played a critical role in securing the Indians' consent to the numbered treaties. It must be noted the Annuity Payments also served the collateral purpose for the Crown of reducing costs it would otherwise incur to provide relief to the Indians during difficult times. As noted above, annuities were seen not only as compensation for the cession of Aboriginal title but also as the means for the Indians to maintain their livelihood in the face of new challenges and an uncertain future. The Crown's representatives offered the Indians perpetual annuities as compensation for what the Crown viewed as the surrender of Aboriginal title to land. The Bands accepted the Annuity Payments as cash towards maintaining a lifestyle – they needed the cash flow to purchase necessities and agreed to Annuity Payments in order to attain an adequate amount of cash to do so not only for themselves but for future generations.

For both parties, these promises were foundational, and formed the core upon which the sacred terms of Treaty 4 were concluded. The Annuity Payment promise was not only intended to be part of the consideration for the surrender of collective interest in land, it was intended to be of sufficient value to provide a meaningful, if not significant, contribution to the future livelihoods of the First Nations signatories and thus would, at the time of treaty, have been seen and considered by all parties to be so.

Broken Promise: Failure to Index Annuity Payments

The facts establish the cash amount of the Annuity Payment paid to the First Nation recipients has never changed; it has remained at $5 per person since 1874. In making these annual payments has the Crown been meeting its legal obligations under the terms of treaty? Or do the principles of treaty interpretation support a conclusion that to meet its legal obligations the Crown has been obligated to make adjustments to the Annuity Payments to preserve their purchasing power and maintain the value of the promise? The First Nation submits the answer to the first question can only be "no" and the second "yes".

The severe decline in purchasing power of the Annuity Payments was the subject of Canada's 1996 *Report of the Royal Commission on Aboriginal Peoples: Restructuring the Relationship* which stated:

> With the passage of time, the value of these annuities, typically $4 or $5 per year, has been severely eroded. The dollar amount specified in the original treaty is still distributed annually.

[4] Alexander Morris, *The Treaties of Canada with the Indians of Manitoba, the North-West Territories and Keewa-tin* (Toronto: Belfords, Clarke & Col, 1880), 332.

> The annuities established by the Robinson treaties, for example, represented between one-half and one-third of the annual wage of an unskilled labourer.[5]

At the time the treaty was entered into, the Treaty bands would have naturally assumed that the value of the Annuity Payments in terms of the equivalent amount of goods or services, would remain stable. Of the number of possible scenarios during treaty negotiation it is most likely the common intention of the parties respecting the Annuity Payments was that the payment to the Treaty bands would maintain equivalent buying power to that held at the time the treaties were entered into. If the Crown had indeed recognized and considered the possibility of significant decline in the purchasing power of the Annuity Payments yet entered into the treaty regardless, the Crown would have acted dishonourably.

In the result and presuming there was no intention of sharp-dealing on the part of the Crown, the common intention of the parties in respect of the Annuity Payments requires the Crown to pay an amount equivalent in buying power of $5 in 1874. It logically follows that the risk of any subsequent decline in the buying power of the dollar was implicitly understood by the parties to be borne by the Crown. The Crown's persistent failure to assume and fulfill its treaty responsibilities by periodically adjusting the treaty annuity payments has resulted in the risk and actual loss of value instead being entirely placed on the First Nation.

When considering the express terms of the treaty under the lens of the established principles of treaty interpretation, the First Nation submits the treaty promise of Annuity Payments was intrinsically connected to the commercial value of $5 at the time the treaty was signed and an equivalent commercial value thereafter in perpetuity. The Crown's failure to index the Annuity Payments to achieve this outcome amounts to a breach of the terms of Treaty 4.

<u>Nearly 150 years of Failure to Index Annuity Payments</u>

The First Nation submits there is little room to argue against a conclusion that by continuing to make a nominal payment of $5 for nearly 150 years the Crown demonstrated a total lack of regard for the true intention of the Annuity Payment promise. While at the time the treaty was signed, it may have been reasonable to assume the continued stability of Annuity Payments in terms of purchasing power, as currency was persistently devalued the Crown had a legal responsibility to ensure the treaty promise was honoured by indexing the Annuity Payments so that their value was maintained.

The special principles developed by the Courts provide that a treaty is a solemn agreement between the Crown and Aboriginal people governed by the honour of the Crown. Mr. Justice Binnie in *Marshall* underscored the importance of the honour of the Crown when the interpretation of a treaty is in issue:[6]

> This principle that the Crown's honour is at stake when the Crown enters into treaties with first nations dates back at least to this Court's decision 1895, *Ontario, Province v. The Dominion of Canada and Province of Quebec.*[7] In *re Indian Claims* (1895), 25 S.C.R. 434. In that decision, Gwynne J. (dissenting) stated, at pp. 511 (para. 12)

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[5] Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples: Restructuring the Relationship*, vol. 2 (Ottawa: Canada Communication Group, 1996), 72. **[SUPP-00010]**

[6] *R v Marshall; R v Bernard [2005] 2 SCR 220, 2005 SCC 43* at para 50-51.

[7] *Ontario v Dominion of Canada,* [1895] 25 SCR 434, 1895 CarswellNat 46.

> ...what is contended for and must not be lost sight of, is that the British sovereigns, ever since the acquisition of Canada, have been pleased to adopt the rule or practice of entering into agreements with Indian nations or tribes in their province of Canada, for the cession or surrender by them of what such sovereigns have been pleased to designate the Indian title, by instruments similar to these now under consideration to which they have been pleased to give the designation of "treaties" with the Indians in possession of and claiming title to the lands expressed to be surrendered by the instruments, and further that *the terms and conditions expressed in those instruments as to be performed by or on behalf of the Crown, have always been regarded as involving a trust graciously assumed by the Crown to the fulfillment of which with the Indians the faith and honour of the Crown is pledged,* and which trust has always been most faithfully fulfilled as a treaty obligation of the Crown.[8]

More recently, the Supreme Court of Canada in the *Manitoba Métis* decision held the honour of the Crown requires the Crown to act in a way that accomplishes the intended purpose of the treaty. Honourable conduct requires the Crown to take a broad purposive approach to the interpretation of the promise and to act diligently in fulfilling it.

While the Court recognized that not every mistake or negligent act in implementing its obligations brings dishonour to the Crown, "a persistent pattern of errors and indifference that substantially frustrates the purposes of a solemn promise may amount to a betrayal of the Crown's duty to act honourably in fulfilling its promise".[9]

The *Restoule v Canada (Attorney General)* decision, and the subsequent 2021 appellate decision, has provided further jurisprudence on the issue of Annuity Payments.[10] In this matter the issue centered on the "augmentation clause" in the Robinson Treaties. The Plaintiff First Nations alleged breach of treaty and sought a declaration that the Crown has been and remains legally obligated to increase the Annuities Payments from time to time in accordance with the treaty terms and that there was no stated limitation or "cap" to the amount of increase. Notably, the matter turns on the "augmentation clause" only found in the Robinson Treaties; however, the decision specifically considered the question of whether to imply an indexation for inflation term to the Annuity Payments.

The Ontario Court of Appeal agreed that the trial judge was correct to reject the proposal to imply an indexing term given the presence of the augmentation clause. In the Court of Appeal's opinion, the augmentation clause provided the Plaintiffs with "a meaningful and enforceable Treaty right that accommodates the risk of inflation".[11] It must be noted this factual circumstance is readily distinguishable from the issue of indexation of Annuity Payments under Treaty 4 where there is no mechanism whatsoever for adjustment to accommodate inflation.

Furthermore, while both Courts found the overarching importance of the "augmentation clause" in the Robinson Treaties and its availability to provide for future uncertainties to be at odds with an implied term to increase Annuity Payments based on inflation, it was emphasized that the

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[8] *re Indian Claims* (1895), 25 S.C.R. 434 at para 12.

[9] *Manitoba Métis Federation Inc. v. Canada (AG)*, 2013 SCC 14 at para 82.

[10] For Trial Decision see: *Restoule v Canada (Attorney General)* [2018] OJ No. 6879, 2018 ONSC 7701; for Appeal Decision see: [2021] ONCA 779.

[11] *Restoule Appeal* at paras. 269-270

honour of the Crown dictated that payments must be increased over time to protect the value of the Annuity Payments in the face of future uncertainties. Specifically for the Robinson Treaties the honour of the Crown could have been (but wasn't) fulfilled via utilization of the "augmentation clause".

When applying *Restoule* to the present Claim, in the absence of any augmentation clause, the First Nation submits the most reasonable interpretation of Treaty 4 and the one that best reconciles the competing interests of the parties is to imply an indexation term to protect the value of the Annuity Payments and to give commercial efficacy to a sacred pact and relationship that was intended to last in perpetuity.

The intention of the Annuity Payment term in Treaty 4 was clear: the Crown was, in part, to provide Annuity Payments to assist the Indians in offsetting the costs of the basic necessities they required to subsist. When Treaty 4 was entered into, the value of the Annuity Payment equated with a certain amount of goods. This *value*, or purchasing power, was extended to the Pasqua Band members to assist them with their livelihood.

As set out in *Restoule* and *Manitoba Métis*, the honour of the Crown requires the Crown to act such that the intended purpose of the treaty is accomplished.[12] The First Nation submits that as the relative value of the Annuity Payments decreased due to inflation to the point of rendering the Annuity Payments virtually useless in terms of purchasing power, the honour of the Crown required the indexing of the Annuity Payments to maintain their value. The indifference of the Crown in failing to do so is a breach of its honourable obligations to the Pasqua First Nation.

Framework for Negotiation

Pasqua First Nation proposes to ultimately settle the Treaty 4 Annuities Indexation Claim in two phases. The first phase, Phase I will focus on Past Compensation as the appropriate means of resolving the just resolution of the Crown's failure to fulfill the promise to maintain the value of the Treaty 4 Annuity promise for the period 1874 to 2024.

The First Nation proposes to resolve Phase I using a model with the following inputs:

1. Nominal annuity ($5) x **"Real Value Adjustment Factor"** = nominal **Real Value of Annuity**;
2. Real Value of Annuity – Actual Annuity Paid = **Lost Annuity Per Capita** in each year in nominal dollars;
3. Lost Annuity Per Capita x Population for Each Year x Present Value Factor (BTA, CPP etc.) = **Present Value** (2024 $) of Total Lost annuity each year; and
4. Sum of Present Value of Lost Annuity each year = **Present Value of Lost Annuities**.

The second phase in this framework for negotiation relates to Future Implementation. Phase II will continue discussions in the spirit of Treaty renewal to co-develop a framework to address the implementation (and modernization) of the Treaty Annuities Promise for the period 2025 into the future.

---

[12] *Restoule v Canada (Attorney General)*, 2021 ONCA 779; *Manitoba Métis Federation Inc. v. Canada (AG)*, 2013 SCC 14.

In collaboration, the parties can work together and set out a statement of the Parties' intentions with respect to the co-development of the Future Implementation.

We look forward to formalizing the framework for our extra-judicial collaboration finding a swift resolution to this Claim. We recommend resuming these discussions on December 18, 2023.

Sincerely,

MAURICE LAW

Per: ______________________
Ryan M. Lake
RML/RSM

cc. **Chief and Council, Pasqua First Nation**

This is Exhibit "K" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
or Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers
Subject: FW: Pasqua's Treaty 4 Annuities Real Value Claim
Date: July 4, 2024 9:57:41 AM

From: Ryan Lake
Sent: Wednesday, December 20, 2023 9:20 AM
To: Hannibal, Tammy <Tammy.Hannibal@rcaanc-cirnac.gc.ca>; McLaughlin, Blake (he-il/lui) <Blake.McLaughlin@rcaanc-cirnac.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Chief Todd Peigan <mtpeigan@pasquafn.ca>; Daigle, Marie-Laurence <marie-laurence.daigle@rcaanc-cirnac.gc.ca>; Kelsey Gabel <KGabel@mauricelaw.com>; Kelley Humber <KHumber@mauricelaw.com>
Subject: RE: Pasqua's Treaty 4 Annuities Real Value Claim

Good morning,

Pasqua can be available January 8 at 2pm est. Can that work for your team?

In response to your comment below, your correspondence of November 30, 2022, expresses an opinion that this Claim is not within the jurisdiction of the *Specific Claims Tribunal Act*. The stated purpose of your proposed engagement with Pasqua is to determine whether we can find a unique path towards resolution. To this end, you requested and we prepared a framework for this engagement. We remain committed to this effort insofar as it leads to a meaningful resolution.

We look forward to hearing from you, best regards

From: Hannibal, Tammy <Tammy.Hannibal@rcaanc-cirnac.gc.ca>
Sent: Monday, December 18, 2023 12:27 PM
To: Ryan Lake <rlake@mauricelaw.com>; McLaughlin, Blake (he-il/lui) <Blake.McLaughlin@rcaanc-cirnac.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Chief Todd Peigan <mtpeigan@pasquafn.ca>; Daigle, Marie-Laurence <marie-laurence.daigle@rcaanc-cirnac.gc.ca>; Kelsey Gabel <KGabel@mauricelaw.com>; Kelley Humber <KHumber@mauricelaw.com>
Subject: RE: Pasqua's Treaty 4 Annuities Real Value Claim

Good morning Mr. Lake,

I'm recently returned from leave and note the below invitation to meet. Unfortunately, both Blake and I are unavailable on December 20, and I do apologize for the short notice of this unavoidable scheduling conflict. I'd like to propose deferring this meeting to the new year. Our earliest availability is the week of January 8.

We would also like to acknowledge receipt of your earlier correspondence of November 15, and are appreciative of the insights you have shared. To facilitate a more fulsome discussion, it would be helpful to us to use this time to consider what you have shared before meeting to discuss further.

As we had indicated earlier in the summer, we note that while our department does not currently have government direction to negotiate Pasqua First Nation's claim outside of the existing Specific Claims process, Pasqua First Nation's specific claim, filed on September 20, 2022, is still within in the three-year timeline for Canada to reach a decision to accept or not accept this claim for negotiation.

Please do not hesitate to contact me if you have any questions.

Tammy Hannibal *(she/her/elle)*

Director, Prairie Negotiations / Directrice, Négociations des Prairies
Negotiations-Central Branch / Direction générale Négociations-Centre
Treaties and Aboriginal Government / Traités et gouvernement autochtone
Crown Indigenous Relations and Northern Affairs Canada / Relations Couronne-Autochtones et des Affaires du Nord Canada
tammy.hannibal@canada.ca Tammy.Hannibal@rcaanc-cirnac.gc.ca/ Tel: 204-891-9534

From: Ryan Lake <rlake@mauricelaw.com>
Sent: Friday, December 1, 2023 1:08 PM
To: McLaughlin, Blake (he-il/lui) <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Hannibal, Tammy <Tammy.Hannibal@rcaanc-cirnac.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Chief Todd Peigan <mtpeigan@pasquafn.ca>; Daigle, Marie-Laurence <marie-laurence.daigle@rcaanc-cirnac.gc.ca>; Kelsey Gabel <KGabel@mauricelaw.com>; Kelley Humber <KHumber@mauricelaw.com>
Subject: RE: Pasqua's Treaty 4 Annuities Real Value Claim

Good afternoon,

December 18 is no longer available. I will send invites to meet on December 20 at 1pm EST.

See everyone then, regards

From: Ryan Lake
Sent: Wednesday, November 15, 2023 9:52 AM
To: McLaughlin, Blake <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Hannibal, Tammy <Tammy.Hannibal@rcaanc-cirnac.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Chief Todd Peigan <mtpeigan@pasquafn.ca>;

Daigle, Marie-Laurence <marie-laurence.daigle@rcaanc-cirnac.gc.ca>; Kelsey Gabel <KGabel@mauricelaw.com>
Subject: Pasqua's Treaty 4 Annuities Real Value Claim

Good morning,

Please find attached the requested proposed framework for the formalization of this extra-judicial process.

We propose resuming these discussions on December 18, 2023.

Please advise of your availability.

Best regards,

Ryan M. Lake
Partner
Maurice Law, Barristers & Solicitors
Suite 300, 602 - 12th Avenue S.W.
Calgary, AB T2R 1J3
Telephone: 403.266.1201
Cellular: 647.982.1867
Facsimile: 403.266.2701
VANCOUVER | CALGARY | EDMONTON | SASKATOON | WINNIPEG | TORONTO | OTTAWA

This is Exhibit "L" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
" Being a Solicitor

Annuities Claims Meeting – Video Conference
1:00pm
January 8, 2024

Attendance:
Maurice Law: Ryan Lake, Kelley Humber
Canada: Tammy Hannibal, DG Blake (absent)
PFN: Chief Peigan,

Ryan Lake:

Tammy Hannibal:

- Opportunity in November to meet with DM Gideon
- Moving slowly on this file.
  - Secure mandate to enter into substantive negotiating
  - 1955 to present the treaty paylist has been provided
- Reviewed the proposal
- Submitted as a specific claim – limited to what specific claims department can do
- Need to develop a process to address the $5 annual treaty payment
  - What is it going to look like going forward
- Preparation that is happening in regards to looking for the mandate
  - Leg work and analysis has been done by PFN and Canada
  - When receive mandate to proceed, letter will be sent to PFN in regards to mandate.
- While seeking mandate outside of specific claims process, we can have exploratory process.
  - Collect info PFN needs
  - Exploring PFN views and interest

Ryan

- What and when do we meet again

Tammy

- Proposing another check-in session in February 2024
  - February 5th week to check-in.

This is Exhibit "M" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

PASQUA FIRST NATION #79

PASQUA FIRST NATION
IR NO. 79

Chief Matthew T. Peigan
Direct Line: (306) 332-5697
Fax: (306) 332-5199
Email: mtpeigan@pasquafn.ca

"Without Prejudice"

January 9, 2024

ATTN: Ms. Valerie Gideon
Associate Deputy Minister of Indigenous Services Canada
200 Eglantine Driveway, Tunney's Pasture
Ottawa, Ontario,
K1A 0H4

Via Email: ***Valerie.gideon@rcaanc-cirnac.gc.ca***

RE: ***Proposed Framework for Resolution f Pasqua's Treaty 4 Annuities Real Value Claim***

Dear Ms. Valerie Gideon,

On behalf of Pasqua First Nation I would like to sincerely thank you for meeting with us on December 6, 2023, where you provided a letter of offer to resolve Pasqua First Nation Agriculture Benefits Claim. The letter further solidifies Canada's commitment to create new partnerships with First Nations in the spirit of reconciliation.

We also discussed Canada's proposed engagement for extra-judicial resolution of the Treaty 4 promise of treaty annuity payments. We are hopeful that Crown-Indigenous Relations and Northern Affairs Canada's engagement with Treaty 4 First Nations on various issues impacting our First Nation will have positive outcomes for everyone.

As mentioned, on July 5, 2023, Pasqua met with Canada to discuss Canada's proposed engagement for extra-judicial resolution of the Pasqua Treaty 4 Annuities Real Value Claim. During that meeting, Pasqua was asked to prepare a Framework for Resolution to advance this engagement. On November 15, 2023, Pasqua tabled the Framework for Resolution (enclosed). On January 8th, 2024, we met with Canada's Team (Tammy Hannibal) to continue our review of the proposed framework for negotiation with the aim of reaching a negotiated settlement. The group proposes to meet during the week of February 5, 2024 for further progress updates. Pasqua First Nation strongly encourages Canada to begin a positive resolution and process to resolve this long outstanding Treaty Obligation.

For nearly 150 years the Crown has failed to index annuity payments promised at Treaty. Pasqua First Nation submits there is little room to argue against a conclusion that by continuing to make a $5 payment for nearly 150 years the Crown allowed for the Annuity Payment promise to become meaningless. While at the time the Treaty was entered into, it may have been reasonable to assume the continued stability of Annuity Payments in terms of purchasing power, the Crown has a legal responsibility and honourable duty to ensure the Treaty is maintained.

In the interests of Canada's reconciliation plan and achieving a fair and timely resolution of this dispute, Pasqua First Nation has prepared the Framework for Negotiation to focus this engagement and create a principled path forward.

Framework for Negotiation

Pasqua First Nation proposes to ultimately settle the Claim in two phases. The first phase, Phase I, will focus on Past Compensation as the appropriate means of resolving the Crown's failure to fulfill the promise to maintain the value of the Treaty 4 Annuity promise for the period 1874 to 2024.

The First Nation proposes to resolve Phase I using a model with the following inputs:

1. Nominal annuity ($5) x **"Real Value Adjustment Factor"** = nominal **Real Value of Annuity**;
2. Real Value of Annuity – Actual Annuity Paid = **Lost Annuity Per Capita** in each year in nominal dollars;
3. Lost Annuity Per Capita x Population for Each Year x Present Value Factor (BTA, CPP etc.) = **Present Value** (2024 $) of Total Lost annuity each year; and
4. Sum of Present Value of Lost Annuity each year = **Present Value of Lost Annuities.**

The second phase in this framework for negotiation, Phase II, relates to Future Implementation. Phase II will continue discussions in the spirit of Treaty renewal to co-develop a framework to address the implementation (and modernization) of the Treaty Annuities Promise for the period 2025 into the future.

In collaboration, the parties can work together and set out a statement of the Parties' intentions with respect to the co-development of the Future Implementation.

Sincerely,

Matthew T. Peigan

Chief Matthew T. Peigan
Pasqua First Nation #79
PO Box 79, Pasqua, Saskatchewan
S0G 5M0

cc. **Chief and Council, Pasqua First Nation**

This is Exhibit "N" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers; Kelley Humber
Subject: FW: Pasqua Treaty 4
Date: March 11, 2025 8:36:19 AM

From: Hannibal, Tammy (she-elle) <Tammy.Hannibal@rcaanc-cirnac.gc.ca>
Sent: February 7, 2024 11:05 AM
To: Ryan Lake <rlake@mauricelaw.com>
Cc: McLaughlin, Blake (he-il/lui) <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Chief Todd Peigan <mtpeigan@pasquafn.ca>; Ron S. Maurice <rmaurice@mauricelaw.com>; Kelley Humber <KHumber@mauricelaw.com>; Kelsey Gabel <KGabel@mauricelaw.com>
Subject: Re: Pasqua Treaty 4

Good morning Ryan,
Thanks for reaching out. I'm meeting in a community this week and making my way back to the city on Friday. Is there any chance we could meet early next week? I've found over the last few days that the cell service is really unpredictable and wifi is scarce. I would hate to have tech issues prevent the meeting from being useful.

Tammy

Sent from my iPhone

On Feb 7, 2024, at 10:49 AM, Ryan Lake <rlake@mauricelaw.com> wrote:

Good morning,

We intended to catch-up this week to continue our discussion.

Do you have some availability?

Let us know, best regards

______________________________<image001.jpg>

Ryan M. Lake
Partner
Maurice Law, Barristers & Solicitors
Suite 300, 602 - 12th Avenue S.W.
Calgary, AB T2R 1J3
Telephone: 403.266.1201
Cellular: 647.982.1867
Facsimile: 403.266.2701
VANCOUVER | CALGARY | EDMONTON | SASKATOON | WINNIPEG | TORONTO | OTTAWA

NOTE: This e-mail message, and any attachments, is intended only for the named recipient(s)

This is Exhibit "O" referred to in the Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
Being a Solicitor

PASQUA FIRST NATION #79

Annuities Claims Meeting – Video Conference
1:30pm Alberta Time
February 13, 2024

Attendance: Ryan Lake, Steve Carey, Ron Maurice, Chief Peigan, Chance, Cathie, Janova, Tim, Fabian, Murray, Roman, Bev
Canada: Tammy Hannibal, Blake (absent)

Tammy:

- Dep't is still searching for a mandate from Canada to proceed with annuities

March 28, 2024 next session

This is Exhibit "P" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
- Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers; Kelley Humber
Subject: FW: Checking In
Date: March 11, 2025 8:39:01 AM

[redacted]

From: Hannibal, Tammy (she-elle) <Tammy.Hannibal@rcaanc-cirnac.gc.ca>
Sent: March 28, 2024 11:46 AM
To: Ryan Lake <rlake@mauricelaw.com>
Subject: Checking In

Good afternoon Ryan,
I wanted to touch base with you and noted that our plans to meet have changed.

I do not have any substantive updates at this time, but perhaps if it works for yourself and your client, we could have a chat post-budget (ie. After April 16), the week of April 22.

Tammy Hannibal *(she/her/elle)*

Director, Prairie Negotiations / Directrice, Négociations des Prairies
Negotiations-Central Branch / Direction générale Négociations-Centre
Treaties and Aboriginal Government / Traités et gouvernement autochtone
Crown Indigenous Relations and Northern Affairs Canada / Relations Couronne-Autochtones et des Affaires du Nord Canada
tammy.hannibal@canada.ca Tammy.Hannibal@rcaanc-cirnac.gc.ca/ Tel: 204-891-9534

This is Exhibit "Q" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
or Being a Solicitor

From: Ryan Lake
To: Anjalika Rogers
Subject: FW: Pasqua's Treaty 4 Annuities Real Value Claim
Date: July 4, 2024 9:58:45 AM

From: Ryan Lake
Sent: Monday, April 1, 2024 11:08 AM
To: McLaughlin, Blake <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Hannibal, Tammy <Tammy.Hannibal@rcaanc-cirnac.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Chief Todd Peigan <mtpeigan@pasquafn.ca>; Daigle, Marie-Laurence <marie-laurence.daigle@rcaanc-cirnac.gc.ca>; Kelsey Gabel <KGabel@mauricelaw.com>; Kelley Humber <KHumber@mauricelaw.com>
Subject: RE: Pasqua's Treaty 4 Annuities Real Value Claim

Good morning,

We've diarized to follow-up with you for a formal update of Canada's intention to resolve this matter with Pasqua extra-judicially.

Kindly let us know your availability and circulate your formal response to the Framework for Resolution dated November, 2023.

Warm regards

From: Ryan Lake
Sent: Friday, December 1, 2023 12:08 PM
To: McLaughlin, Blake <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Hannibal, Tammy <Tammy.Hannibal@rcaanc-cirnac.gc.ca>
Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Chief Todd Peigan <mtpeigan@pasquafn.ca>; Daigle, Marie-Laurence <marie-laurence.daigle@rcaanc-cirnac.gc.ca>; Kelsey Gabel <KGabel@mauricelaw.com>; Kelley Humber <KHumber@mauricelaw.com>
Subject: RE: Pasqua's Treaty 4 Annuities Real Value Claim

Good afternoon,

December 18 is no longer available. I will send invites to meet on December 20 at 1pm EST.

See everyone then, regards

From: Ryan Lake
Sent: Wednesday, November 15, 2023 9:52 AM
To: McLaughlin, Blake <Blake.McLaughlin@rcaanc-cirnac.gc.ca>; Hannibal, Tammy <Tammy.Hannibal@rcaanc-cirnac.gc.ca>

Cc: Ron S. Maurice <rmaurice@mauricelaw.com>; Chief Todd Peigan <mtpeigan@pasquafn.ca>; Daigle, Marie-Laurence <marie-laurence.daigle@rcaanc-cirnac.gc.ca>; Kelsey Gabel <KGabel@mauricelaw.com>
Subject: Pasqua's Treaty 4 Annuities Real Value Claim

Good morning,

Please find attached the requested proposed framework for the formalization of this extra-judicial process.

We propose resuming these discussions on December 18, 2023.

Please advise of your availability.

Best regards,

Ryan M. Lake
Partner
Maurice Law, Barristers & Solicitors
Suite 300, 602 - 12th Avenue S.W.
Calgary, AB T2R 1J3
Telephone: 403.266.1201
Cellular: 647.982.1867
Facsimile: 403.266.2701
VANCOUVER | CALGARY | EDMONTON | SASKATOON | WINNIPEG | TORONTO | OTTAWA

This is Exhibit "R" referred to in the
Affidavit of

CHIEF MATTHEW TODD PEIGAN

Sworn before me on this 13th day

of March A.D. 2025

Commissioner for Oaths In and for the Province Of Saskatchewan
– Being a Solicitor

Relations Couronne-Autochtones et Affaires du Nord Canada
Crown-Indigenous Relations and Northern Affairs Canada

Sous-ministre
Deputy Minister

Ottawa, Canada
K1A 0H4

Chief Matthew T. Peigan
Pasqua First Nation
P.O Box 79
PASQUA SK S0G 5M0

mtpeigan@pasquafn.ca

Dear Chief Peigan:

Thank you for your January 9, 2024 correspondence regarding Canada's letter of offer to resolve Pasqua First Nation's Agricultural Benefits Claim, and Canada's proposed engagement for extra-judicial resolution of the Pasqua Treaty 4 Annuities Real Value Claim. I apologize for the delay in responding. I am pleased to hear the letter of offer to resolve the Pasqua First Nation Agriculture Benefits Claim was well received in the community. I would also like to thank you for the insights you have shared related to the Treaty 4 Annuities Claim.

Although it is Canada's preference to resolve claims through negotiation rather than litigation, Canada does not have a mandate to negotiate the indexation of annuities with Pasqua First Nation. Please let me assure you that Pasqua First Nation's desire to negotiate this matter with Canada has been registered and, should Canada obtain a mandate to negotiate, Canada will provide Pasqua First Nation with an offer to enter negotiations.

In addition to this letter, I hope your January 8 and February 13, 2024 meetings with Tammy Hannibal, Director of Prairies negotiations, helped provide more clarity on this matter for you.

Yours sincerely,

V Gideon

Valerie Gideon

Canada

This is Exhibit "C" referred to in the Affidavit of

HEAVEN DESCHAMPS

Affirmed before me on this 1st day

of December, 2025

Kelley Humber

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Alberta

SCT File No.: SCT - 5003 - 24
-

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

PASQUA FIRST NATION

Claimant

- and -

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

Respondent

DECLARATION OF CLAIM

Treaty 4 Annuities Indexation

(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.*

July 24, 2024
Date

Katherine Richard
Registry Officer

TO: Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

Civil Litigation Section
Department of Justice Canada
50 O'Connor Street, 5th Floor.
Ottawa, Ontario K1A 0H8
Telephone: 613-670-6214
Fax: 613-954-1920

I. CLAIMANT (r. 41(a))

1. The Claimant, Pasqua First Nation, is a First Nation within the meaning of subsection 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c. 22 (the "*SCTA*"), by virtue of being a "band" within the meaning of the *Indian Act*, RSC 1985, c. I-5. The Pasqua Indian Reserve No. 79 is located east of Regina, Saskatchewan in the vicinity of Fort Qu'Appelle. The Pasqua people are of mixed Saulteaux-Cree ancestry.

II. CONDITIONS PRECEDENT (r. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the *SCTA* have been fulfilled:

> 16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and
>
> (a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

3. The First Nation submitted the *Pasqua First Nation Treaty 4 Annuities Indexing Specific Claim Submission* (the "Claim Submission") on March 30, 2022 regarding the Crown's failure to augment or increase the annual payments of $5 for every man, woman and child as set out in Treaty 4 (the "Annuity Payments") in order to offset the impacts of inflation and maintain the purchasing power thereof (the "Claim").

4. By letter dated November 30, 2022, Canada advised that early review of the Claim Submission had been completed and it had been determined that the Claim Submission met the Minimum Standard established by the Minister of Crown-Indigenous Relations pursuant to the *SCTA*. The Claim was filed with the Minister on September 20, 2022.

5. The Claimant entered into an engagement process with Crown Indigenous Relations and Northern Affairs Canada ("CIRNAC") in an attempt to resolve the Claim. To that end, CIRNAC requested a framework for negotiation and methodology which the Claimant submitted to CIRNAC on November 15, 2023.

6. On December 18, 2023, CIRNAC advised the Claimant that it did not currently have government direction to negotiate the Claim outside the Specific Claims Process. Further, on April 8, 2024, Deputy Minister of CIRNAC, Valerie Gideon, wrote to Chief Todd Peigan

and advised that "Canada does not have a mandate to negotiate the indexation of annuities with Pasqua First Nation." Deputy Minister Gideon's statement is tantamount to a written rejection of the Claim for negotiation in fulfilment of the condition precedent for filing a Declaration of Claim with the Specific Claims Tribunal (the "Tribunal") as set out in s. 16(1)(a) of the *SCTA*.

III. CLAIM LIMIT (*Act*, s. 20(1)(b))

7. For the purposes of this Claim, the Claimant does not seek compensation in excess of $150 million.

IV. GROUNDS (*Act*, s. 14(1))

8. The First Nation submits that the Claim falls within s. 14(1) of the *SCTA* 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: [...]
>
> **(a)** a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown; [...]
>
> **(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;

9. The Crown's failure to index the Annuity Payments to offset the impact of inflation and to maintain the purchasing power thereof has resulted in the erosion of the value of the Annuity Payments to the point of being worthless in breach of the Crown's legal obligation to provide "other assets under a treaty" pursuant to s. 14(1)(a). The Crown's failure to index the Annuity Payments constitutes a breach of its legal obligation with respect to its administration of "Indian moneys or other assets of a First Nation" pursuant to s. 14(1)(c).

10. The Specific Claims Branch took the position that the Claim fell outside the jurisdiction of the *SCTA* because the Specific Claims Process cannot be used to resolve Claims that are based on events that are less than 15 years old and forward looking. Section 15(1)(a) of the *SCTA* precludes the filing of a claim with the Tribunal that "is **based on events** that occurred within 15 years immediately preceding the date on which the claim was filed with the

Minister." The events at issue in this Claim date back to the signing of Treaty 4 and the Crown's failure to abide by and diligently implement the solemn promises exchanged in relation thereto, specifically the promise to maintain the real value of the Annuity Payments to address the impact of inflation and the erosion of purchasing power.

11. The alternative basis for liability is a breach of the Crown's fiduciary, honourable and equitable obligations on account of its failure to negotiate or include in Treaty 4, a provision requiring the Crown to augment, increase or index the Annuity Payments. With respect to either basis of liability, s. 15(1)(a) is not engaged and the Claim may be filed with the Tribunal.

V. ALLEGATIONS OF FACT (r. 41(e))

The Crown Sought to Enter Treaties Throughout the North-West Territories to Open Up Canada for Settlement, Immigration, Mining, Lumbering, Trading and Other Purposes

12. Pursuant to the *Rupert's Land and North-Western Territory Order* dated June 23, 1870, the North-West Territories (which included lands within the present-day province of Saskatchewan) were admitted into the Dominion of Canada on certain terms and conditions including, *inter alia*, the payment of £300,000 by the federal Crown to the Hudson's Bay Company.

13. The Indian signatories to the numbered Treaties faced an uncertain future in the time immediately prior to entering into treaty. The collapse of the traditional hunting economy based on the bison and the continued encroachment of European settlers had created a sense of urgency on the part of Bands to protect their interests. At the same time, the Crown sought to pave the way for future settlement of the west by acquiring (what it viewed as) legal title to large masses of land and reduce the threat of an uprising of the Indians through the making of Treaties.

14. Between 1871 and 1899, the Crown entered into Treaties 1 through 8 with various Indian Bands and Tribes (referred to hereinafter as "Treaty Bands" or "Bands") throughout the North-West Territories, which included present-day Saskatchewan, to open up the west for settlement, immigration, mining, lumbering, trading and other purposes. According to the

written terms of the Treaties, the Crown promised to provide specific benefits, including, *inter alia*, the payment of an initial present or gratuity, annuities, and reserves to be set aside for the exclusive use and benefit of Treaty Bands.

15. The Treaty negotiations were fraught with conflict, as the Bands were aware that the Crown had paid the Hudson's Bay Company (£300,000) for its interests in the vast territory of what was then referred to as Rupert's Land. The Bands vehemently argued that the lands belonged to them, and that the money should have been theirs. Chief Pasqua openly protested to the treaty commissioners, insisting the money should have been paid to the bands whose land it was. This confirms that the Bands and the Crown contemplated the payment of monetary compensation in exchange for rights to and interests in land.

16. Central to the negotiations for virtually all of the numbered Treaties were the assurances on the part of the Government that the Indian signatories would receive specific and enforceable Treaty benefits in exchange for their agreement to "cede" their collective rights and interests to a vast area of land. The Crown's promise to provide Treaty benefits to assist and support a sustainable future for the Bands in light of their rapidly changing circumstances was critical to their acceptance of Treaty.

17. The negotiation of Indian Treaties in Canada stretched over a period of over 200 years. While there are important differences between the Treaties, there is necessarily a unity to the Treaty process and the Crown intended to establish a clear set of terms with relative parity to ensure that all Bands were treated equitably and did not receive substantially more or substantially less than other signatories to other Treaties.

Pre-Confederation Treaties in Canada and the Origin of Annuity Payments

18. With the end of the Seven Years War in 1760, the practice of paying annuities to the Indians, sometimes in addition to presents, was adopted by the Crown as a means of securing the consent of the Indians to the land cession treaties. *The Royal Proclamation of 1763*, which protected Indian lands from encroachment by settlers by requiring that Indian lands had to first be surrendered to the Crown before they could be alienated, entrenched the process of treaty-making as the preferred means of ceding Aboriginal title to land. The special protection afforded to Indian lands by the *Royal Proclamation of 1763* constituted legal

recognition by the Crown of the collective rights held by the Indians in their lands giving rise to the requirement to compensate the Indians for the abrogation of those rights through the payment of a one-time lump-sum and later annuities in perpetuity.

19. The Selkirk Treaty of 1817, between Lord Selkirk and the Ojibwe, Cree and Assiniboine of the region within two miles on either side of the Red and Assiniboine Rivers in present-day Minnesota and Manitoba, included a provision that the Chiefs and warriors were to be paid annually "the present or quit rent consisting of two hundred pounds weight of good and merchantable tobacco" thereby equating the annuity with the amount of goods it could buy. This trend continued with a provisional agreement with the Chippewas of Lakes Huron and Simcoe in 1818 which provided the payment of a yearly sum to the collective of "twelve hundred pounds currency **in goods at the Montreal prices . . . as a full consideration for the Lands hereby sold and conveyed to His Majesty.**" The same wording, with minor differences, was used in subsequent agreements with the Mississauga of Credit River in October 1818 and Rice Lake in November 1818.

20. In none of the treaties concluded between 1818 and 1836 were any portion of annuities paid in cash. Rather, annuities were paid in the form of goods deemed essential to survival which linked the value of the annuities to sustaining the livelihood of the individual recipients and the collective as a whole.

21. The Robinson Treaties of 1850, negotiated by William Robinson with the Indians along Lakes Huron and Superior, "were the forerunners of the future treaties and shaped their course." In order to secure title to 33.5 million acres, Robinson offered the Indians £4,000 in cash and an annuity of £1,000 in perpetuity. In the final version of the Robinson Treaties, the lump sum payment had been reduced to £2,000 and the annuity to £500, however the written text of the treaties included an augmentation clause that promised an increase in the annuity in the event that the territory ceded produced an amount that enabled the Government of Ontario to augment the annuity without incurring loss.

22. The first and only augmentation to the annuities was made in 1875 when the Government of Canada, in response to years of demands from various Chiefs of the two territories, increased the annuities to £1 per capita which has been paid out to individuals on an annual

basis since that time. Further, in 1877, the Chiefs began petitioning for arrears of the increase to annuity payments for the period 1850-1874, arguing that economic circumstances had existed for many years prior to 1875 to justify this increase. Payment of arrears finally began in 1903.

23. While an equivalent augmentation clause was not included in any of the Numbered Treaties that followed the Robinson Treaties, the Crown was aware that it was not only just but necessary to increase the Annuity Payments in accordance with the amount of profit that the Crown derived from the territory ceded to fulfill its honourable obligations to its treaty partners.

Unity of the Terms of the Numbered Treaties

24. After Confederation in 1867, the payment of annuities remained a central feature of the Numbered Treaties negotiated with the Indians in the territory stretching from the Lake of the Woods to the eastern slopes of the Rocky Mountains.

25. Treaties 1 and 2 were the first Indian Treaties negotiated by the newly created Dominion of Canada at Fort Garry in 1871. Canada appointed the Lieutenant-Governor of Manitoba, Adams G. Archibald, and the Indian Commissioner, Wemyss M. Simpson, to negotiate the terms of the Treaties with the Cree and Saulteaux Indians to open up fertile agricultural lands in what is now southern Manitoba to settlement.

26. Significantly, a copy of the Robinson Treaties was provided to the Treaty Commissioners to guide them in their approach to treaty-making with the Indians. Moreover, while negotiating the terms of Treaty 1 in 1871, Lieutenant-Governor Archibald made an explicit promise to the Indians assembled at the Stone Fort that they would be treated in a similar manner to the Indians of the Robinson Treaties:

> Another thing I want you to think over is this: in laying aside these reserves, and in everything else that the Queen shall do for you, you must understand that she can do for you no more than she has done for her red children in the East. *If she were to do more for you that would be unjust for them. She will not do less for you because you are all her children alike, and she must treat you all alike.*

27. Treaty 1 was ratified in September of 1871 and Treaty 2 was signed on August 21, 1871 and ratified by Order in Council dated November 25, 1871. The written text of Treaties 1 and 2 demonstrates the intended and direct correlation between the value of the annuity provided for in the Treaty and its purchasing power:

> Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the district above described, distributing them in families, and shall in every year ensuing the date hereof (…) *pay to each Indian family of five persons the sum of fifteen dollars Canadian currency, or in like proportion for a larger or smaller family, such payment to be made in such articles as the Indians shall require or blankets, clothing, prints (assorted colors), twine or traps, at the current cost price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interests of Her Indian people, in cash.*

28. The option of providing the annuity in goods or cash demonstrates a link between the Numbered Treaties and the Pre-Confederation Treaties' purpose of furnishing the Indians with necessities for survival in the form of an annuity. It also links the value of the Annuity Payments with the purchasing power of same giving rise to an inherent treaty promise that the Annuity Payments will keep pace with the price of goods that those payments intend to supply.

29. Treaty 3 concluded in October, 1873. As with Treaties 1 and 2, of prime importance to the signatories to Treaty 3 was the need to ensure their economic subsistence and security through cash, clothing and materials which supported their livelihood. During the treaty negotiations, the Treaty 3 Chiefs argued for a higher annuity than the amount offered under Treaties 1 and 2 on the basis that the lands were more valuable. The Annuity Payments were seen by the parties as consideration for the land **and** the means to secure the future livelihood of the collective.

The Situation Prevailing when Treaty 4 was Signed

30. The historical events that were contemporaneous with the negotiation and signing of Treaty 4 inform the intentions of the parties with respect to the scope and meaning of the promise to provide Annuity Payments.

31. When Treaty 4 was negotiated in 1874, Chief Pasqua and his Band lived near Leech Lake, in what is now the province of Saskatchewan. Prior to Treaty 4, the Band depended primarily on bison with some Band members pursuing agriculture to a small degree.

32. Chief Sweetgrass, considered spokesman for the chiefs of the northern plains, expressed outrage at learning the lands occupied by the Indians had been "sold" without consent. In 1871, he informed Lieutenant Governor Adams Archibald as follows:

> *We heard that our lands were sold and we did not like it; we don't want to sell our lands; it is our property, and no one has a right to sell them.* Our country is getting ruined of fur-bearing animals, hitherto our sole support, and now we are poor and want help – we want you to pity us. *We want cattle, tools, agricultural implements, and assistance in everything when we come to settle – our country is no longer able to support us. Make provision for us against years of starvation.* We have had great starvation over the past winter, and the small-pox took away many of our people, the old, young, and children...We invite you to come and see us and to speak with us . . .

33. The Crown did not find disease and impending starvation sufficient to warrant entering into Treaty 4. Ultimately, it was the Crown's determination to expand settlement and to avoid an Indian war which precipitated Treaty 4 negotiations and on September 8, 1873, the North-West Council provided Lieutenant-Governor Morris with the mandate to negotiate the terms of Treaty 4. In doing so, the Council recommended including an annuity payment that terminated in 25 years and that the payments should be made in goods rather than cash.

Treaty 4 Negotiations and the Promise to Pay Annuities

34. Negotiations for Treaty 4 took place at Fort Qu'Appelle in September 1874. The treaty commissioners arrived at Qu'Appelle accompanied by a military escort of 113 men which had a threatening effect on the Indians gathered to negotiate a treaty. The negotiations themselves were protracted and fraught with conflict. Chief Pasqua protested to the treaty commissioners that the money paid to the Hudson's Bay Company for title to Rupert's Land should have gone to the Indians. Accordingly, the issue of monies owing for lands taken unlawfully was front of mind during negotiations.

35. With respect to the Annuity Payments, Treaty Commissioner Morris promised the Indian signatories that the Crown **"would like that you have some money every year to buy things that you need."** This promise was made in the context of the foreseeable demise of

the buffalo and the Crown's recognition of its honourable obligation to provide for the Bands and their descendants: "for you and for your children, and . . . for the children that are yet to be born." The Annuity Payments which consisted of "five dollars to every man, woman and child, as long as the sun shines and the water flows" were for the purpose of safeguarding the Indian signatories' livelihood and the livelihood of future generations in the face of new challenges and an uncertain future. The final provisions respecting presents and annuities in Treaty 4 read as follows:

> As soon as possible after the execution of this treaty, Her Majesty shall cause a census to be taken of all the Indians inhabiting the tract hereinbefore described, *and shall next year, and annually afterwards, forever, cause to be paid, in cash,* at some suitable season to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded; *each Chief, twenty-five dollars, each head man, not exceeding four to a band, fifteen dollars; and to every other Indian, man, woman and child, five dollars per head….*

36. Chief Pasqua, one of the original signatories to Treaty 4, entered into treaty on behalf of his Band at Qu'Appelle in the North-West Territories on September 15, 1874. Treaty 4 was entered into on behalf of Her Majesty the Queen in right of Canada by Alexander Morris, Lieutenant Governor of the North-West Territories; David Laird, Indian Commissioner; and William Joseph Christie. The promise to provide the Annuity Payments in support of the future livelihood of the Bands in changing circumstances was critical with respect to concluding the treaty.

37. One year after Chief Pasqua signed Treaty 4, Commissioners W. J. Christie and M. G. Dickieson met with Treaty 4 Indians at Qu'Appelle to make the first Annuity Payments and to take further adhesions to treaty from other Bands.

38. From that time forward, Pasqua has received Annuity Payments in cash in the amount of $5 per man, woman and child in proportion to the population of its members.

The Crown has Failed to Augment, Increase or Index the Annuity Payments in Breach of the Treaty and the Crown's Honourable and Fiduciary Obligations

39. In the 150 years since Chief Pasqua entered Treaty 4 with the Crown in 1874, the relative value of the Annuity Payments has decreased due to inflation to the point of rendering the Annuity Payments meaningless in terms of purchasing power.

40. The amount of the Annuity Payment has never been augmented, increased or indexed for the purposes of offsetting the impacts of inflation and maintaining the real value thereof.

VI. THE BASIS IN LAW ON WHICH THE CROWN IS SAID TO HAVE FAILED TO MEET OR OTHERWISE BREACHED A LAWFUL OBLIGATION

41. The Crown breached its treaty, fiduciary, honourable, legal and/or equitable obligations and the Honour of the Crown when it failed to increase, augment or index the Annuity Payments, as promised by the Crown under the terms of Treaty 4, in order to maintain the real value of the Annuity Payments and to implement the purpose and intention of the Treaty promise.

42. In the alternative (if the Crown did not have an ongoing obligation to increase, augment or index the Annuity Payments), the Crown breached its fiduciary duty, by failing to uphold the Honour of the Crown and/or committed equitable fraud when:

    a. The Crown fell below the standard of a fiduciary and acted in bad faith during the negotiations and the subsequent implementation of Treaty 4;

    b. The Governor-in-Council approved and consented to Treaty 4 on terms which were unconscionable, foolish, improvident, and otherwise amounted to exploitation;

    c. The Crown proceeded to implement Treaty 4 on terms that were unconscionable, foolish, improvident, and otherwise amounted to exploitation; and

    d. The Crown failed to diligently implement the terms of Treaty 4 in a uniform and equitable manner for all Treaty 4 Bands.

The Crown Breached its Treaty, Fiduciary, Honourable, Legal and/or Equitable Obligations and Failed to Uphold the Honour of the Crown

43. Treaty 4 is a source of enforceable rights which are recognized and constitutionally affirmed at Canadian law under section 35 of the *Constitution Act, 1982*.

44. It is well-established that the Honour of the Crown governs the interpretation of historic Treaties in a way that fulfils the intended purposes of Treaty and statutory grants, and assumes that the Crown always intends to fulfill its promises.

45. The Treaty-making process and the promises arising therefrom, which resulted in the Crown's taking of lands held pursuant to Aboriginal Title in exchange for certain promises, necessarily requires an interpretation of the Treaty that maintains fidelity to the spirit and intent of the Treaty. The Annuity Payment clause must be interpreted in a way that is consistent with, *inter alia*, the Nation-to-Nation relationship between the parties, the Honour of the Crown and the duty of diligent implementation, and the Crown's fiduciary duties.

46. The intention behind the Annuity Payment clause in Treaty 4 is clear: in exchange for the taking of vast traditional territories and natural resource wealth, the Crown was, in consideration, to provide the Annuity Payments to safeguard the livelihood of the signatories and subsequent generations in the face of new challenges and an uncertain future. When Treaty 4 was signed, the value of the Annuity Payment equated with a basket of goods premised upon sustaining each member of the collective. This value, or purchasing power, is inherent in the written promise and/or constitutes an implied term of the treaty. What the treaty signatories bargained for was a livelihood and not merely a trivial cash payment of merely symbolic value.

47. The Claimant asserts that, when properly interpreted according to the relevant interpretation principles, including the officious bystander test and the Honour of the Crown, Treaty 4 includes a promise to augment, increase or index the amount of the Annuity Payment from time to time.

48. The Claimant asserts that the Crown failed to fulfill its obligations to properly administer the Annuity Payments by failing to ever augment, increase or index the annual payments since entering into Treaty 4 with the Claimant in 1874. Over time, the relative value of the Annuity Payments has decreased due to inflation to the point of rendering the Annuity Payments meaningless in terms of purchasing power.

In the Alternative, the Federal Crown Breached its Fiduciary Duty, Failed to Uphold the Honour of the Crown and/or Committed Equitable Fraud at the Time of Treaty-making and by Proceeding to Implement the Treaty on Unconscionable Terms

49. The Crown recognized that it had an "obligation of honourable dealing" with Indigenous peoples as early as the *Royal Proclamation of 1763*. This obligation, which underpins the Honour of the Crown, "derives from the Crown's assertion of sovereignty in the face of prior Aboriginal occupation". The Honour of the Crown is always at stake in the Crown's dealings with Indigenous peoples. "A constitutional principle", the Honour of the Crown is a source of enforceable affirmative obligations which extends to the making and diligent implementation of Treaty 4.

50. Where the Crown assumes discretionary control over a specific or "cognizable" Aboriginal interest (such as Aboriginal Title), this gives rise to fiduciary duties on the part of the Crown. As a fiduciary, the Crown must act with utmost loyalty and cannot consent to any improvident bargain.

51. The Claimant asserts that the Crown's actions in failing to secure an explicit augmentation clause fell below the standard of a fiduciary, failed to uphold the Honour of the Crown, and/or amounted to bad faith during the negotiations of Treaty 4. The Robinson Treaties equipped the Crown with an awareness of the justice and the necessity of such a provision and by failing to explicitly include an augmentation clause in Treaty 4, the Crown engaged in sharp dealing. Further, by promising to treat the Indians in the North-West Territories in the same manner as the Indian signatories to the Robinson Treaties and then by failing to uphold that promise with respect to the inclusion of an augmentation clause, the Crown breached its fiduciary and honourable obligations.

52. The Claimant asserts that the Crown breached its fiduciary duty to Pasqua First Nation when it approved and consented to Treaty 4 on terms which were foolish, improvident, and otherwise amounted to exploitation.

53. The Claimant asserts that the Crown further breached its duties by continuing to implement the improvident bargain on unconscionable terms.

VII. RELIEF SOUGHT

54. The Claimant seeks the following relief:

a. A determination that Treaty 4 imposes an obligation on the Crown to increase the annual payment of $5 payable to each Treaty Indian "for ever", from time to time, to maintain the real value of the Annuity Payments and give effect to the purpose and intention of this Treaty promise in recognition of the signatories' right to its fair share of the revenues flowing from the Crown's taking up of the territory for settlement, immigration, mining, lumbering, trading and other purposes;

b. A determination that the Respondent has breached its Treaty, fiduciary, honourable, legal and/or equitable obligations and/or failed to uphold the Honour of the Crown when it failed to increase, augment or index the amount of the Treaty Annuities from $5 since 1874, the value of which has been seriously eroded due to inflation and the time value of money;

In the alternative:

c. A determination that the Respondent had a fiduciary duty to Pasqua First Nation in the negotiation and implementation of Treaty 4, which included the duty to act prudently, in good faith, with loyalty to the beneficiaries' interest, and to provide disclosure of the effects of inflation on the value of the Treaty Annuities which the Respondent breached when it failed to include in Treaty 4, a provision to augment, increase, or index the amount of $5 from 1874 to the present, to maintain the real value of the Annuity Payments which has been seriously eroded since the time of treaty;

d. A determination that the Respondent failed to uphold the Honour of the Crown and/or committed equitable fraud when the Governor-in-Council approved and consented to Treaty 4 on terms which were foolish, improvident, and otherwise amounted to exploitation;

e. A determination that the Respondent committed a further breach of its duties and obligations by failing to implement the terms of Treaty 4 in a uniform and equitable manner as compared to the signatories to the Robinson Treaties and with respect to the Governor-in-Council's consent and approval of said inequitable terms;

55. The remedy for which, includes but is not limited to:

a. Equitable compensation for the historic failure to increase or augment the Annuities Payment provision from time to time;

b. Costs to be awarded on a solicitor-client basis 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

c. Such other relief as counsel may advise and this Honourable Tribunal deems just.

Dated this July 23, 2024

Ron S. Maurice
Ryan M. Lake
Anjalika Rogers
Geneviève Boulay

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I HEREBY CERTIFY that the above document is a true copy of the original filed with the Tribunal

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au Tribunal

Filing date / Date de dépôt: July 24, 2024

Dated / Fait le: July 24, 2024 Katherine Richard

Katherine Richard

This is Exhibit "D" referred to in the Affidavit of

HEAVEN DESCHAMPS

Affirmed before me on this 1st day

of December, 2025

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in and for the Province of
Alberta

SCT File No.: SCT-5003-24

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

PASQUA FIRST NATION

Claimant

v.

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

Respondent

RESPONDENT'S NOTICE OF APPLICATION FOR LEAVE AND TO STRIKE PROCEEDINGS

Pursuant to Part 4 of the *Specific Claims Tribunal Rules of Practice and Procedure*

TO: **Pasqua First Nation**
As represented by:
Maurice Law Barristers & Solicitors
300, 602 – 12th Ave. SW
Calgary, AB TR2 1J3
Attention: Ron S. Maurice, Ryan M. Lake, Anjalika Rogers, Genevieve Boulay

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I. RELIEF SOUGHT (Rule 34(a))

TAKE NOTICE that the respondent, His Majesty the King in right of Canada (**Canada**), will make an application before the Specific Claims Tribunal at a time and place to be determined by the Tribunal for the following relief:

1. Pursuant to paragraphs 16(1)(a) and (b) and subsection 17(a) of the *Specific Claims Tribunal Act* (*SCTA*), Rule 5 of the *Rules*, and Rules 208 and 221(1) of the *Federal Courts Rules*, an order striking the claim in whole without leave to amend.

2. Pursuant to subsection 38(2) of the *Specific Claims Tribunal Act* (*SCTA*) and Rule 151(1)(2) of the *Federal Courts Rules*, an order that the without prejudice and settlement privileged communications and related contextual information contained in the affidavit and attached exhibits of Tammy Hannibal dated February 18, 2025 and the affidavit and attached exhibits of Marie-Laurence Daigle dated February 18, 2025 be subject to a confidentiality order.

3. Pursuant to rule 31 of the *Rules*, an order granting Canada leave to make this application orally.

4. If the claim is not struck, an order granting Canada an extension of time to file its Response to a date following the disposition of the application to strike.

5. Such further and other relief as this Honourable Tribunal considers just.

II. THE GROUNDS FOR THE APPLICATION (Rule 34(a))

1. On July 24, 2024, Pasqua First Nation filed this Declaration of Claim (Claim) with the Specific Claim Tribunal. The Tribunal does not have jurisdiction over the Claim, as none of the conditions precedent in subsection 16(1) have been met: the Minister of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) has not made a decision as

to whether to negotiate Pasqua First Nation's specific claim, and three years have not elapsed since Pasqua First Nation's specific claim was filed with the Minister.

2. Pasqua First Nation submitted its specific claim (Claim Submission) to the Specific Claims Branch (SCB) of CIRNAC on March 20, 2022. The Claim Submission was deemed filed with the Minister of CIRNAC on September 20, 2022. To date, the Minister has not made a decision on whether or not to negotiate the claim and has not consented to the early filing of this claim. Pursuant to paragraph 16(1)(b) of the *SCTA,* the Minister has until September 20, 2025, to decide whether to negotiate the Claim Submission.

3. On November 30, 2022, [redacted]

4. [redacted]

5. In April 2024, the Deputy Minister of CIRNAC sent a letter to Chief Peigan. [redacted]

6. Pasqua First Nation's Claim filed on July 24, 2024, with the Specific Claims Tribunal, asserts that the Deputy Minister's April 2024 letter was tantamount to a rejection to negotiate the Claim Submission. The Deputy Minister does not have delegated authority to accept or reject specific claims for negotiation. That authority lies with the Assistant Deputy Minister responsible for the Specific Claims Program.

7. Pasqua First Nation relies on this and other communications covered by settlement privilege to assert its position that the SCB declined to negotiate its Claim Submission. To properly respond to this allegation, and for the Tribunal to have the appropriate evidence before it, the public interest favours an exception to settlement privilege in this case. In order to protect otherwise privileged communications from becoming available for public view, a confidentiality order is appropriate in the circumstances to protect the privacy of privileged communications between Pasqua First Nation and Canada.

8. The Deputy Minister's April 2024 communication was not a rejection by the SCB to negotiate the Claim Submission. At no time since Pasqua First Nation filed its Claim Submission was the specific claim accepted or rejected for negotiation by the Minister. Accordingly, the Claim does not fall within the requirements of subsection 16(1) of the *SCTA*.

9. The Tribunal does not have discretion to proceed with a Declaration of Claim that is outside the jurisdiction of the Tribunal and the express terms of the *SCTA*. Canada therefore submits that this Tribunal should strike the Declaration of Claim on a *without prejudice* basis to the Claimant re-filing the Claim once a condition precedent in subsection 16(1) of the *SCTA* has been met.

10. This application is brought in accordance with Rules 29 and 30 of the *Specific Claims Tribunal Rules of Practice and Procedure* and subsections 17(a) and 38(2) of the *SCTA*. Applications to strike under sections 14-16 and applications for confidentiality orders are explicitly provided for in the *SCTA* and as such, leave is not required to make such applications.

Material or evidence to be relied on:

1. The Declaration of Claim filed on July 24, 2024.
2. Canada's memorandum of fact and law dated February 21, 2025;
3. Affidavit of Marie-Laurence Daigle sworn on February 18, 2025;
4. Affidavit of Tammy Hannibal sworn on February 18, 2025; and

   Such further and other material as counsel may advise and this Honourable Tribunal may allow.

Statutes and rules to be relied on:

1. *Federal Courts Rules,* Rules 151(1)(2), 208 and 221(1);
2. *Specific Claims Tribunal Act*, S.C. 2008, c. 22, generally and in particular s. 15(3), 16(1)(a)(b), 17(a) and 38(2);
3. *Specific Claims Tribunal Rules of Practice and* Procedure, SOR/2011-119, generally and in particular rules 5, 29-31, 34 and 110-111.

III. CONSENT (Rule 34(b))

4. Pasqua First Nation has not consented to the relief sought in this application.

Dated this 24 day of February 2025

ATTORNEY GENERAL OF CANADA
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Counsel for the Respondent

This is Exhibit "E" referred to in the Affidavit of

HEAVEN DESCHAMPS

Affirmed before me on this 1st day

of December, 2025

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Alberta

FILE NO.: SCT-5003-24
CITATION: 2025 SCTC 4
DATE: 20250724

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:

PASQUA FIRST NATION

Claimant (Respondent)

Ryan Lake and Anjalika Rogers, for the Claimant (Respondent)

– and –

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

Respondent (Applicant)

Gabriela Fuentealba and Evan Morrow, for the Respondent (Applicant)

HEARD: April 16, 2025

REASONS ON APPLICATION

Honourable Victoria Chiappetta, Chairperson

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Cases Cited:

Aundeck Omni Kaning v Her Majesty the Queen in Right of Canada, 2014 SCTC 1; *Quebec (AG) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39.

Statute Cited:

Specific Claims Tribunal Act, SC 2008, c 22, preamble, ss 14, 16, 17.

Author Cited:

Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed (Markham, Ont: Butterworths Canada, 2002).

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I. INTRODUCTION

[1] On July 24, 2024, the Claimant, the Pasqua First Nation (Pasqua), filed a Declaration of Claim (Claim) with the Specific Claims Tribunal (Tribunal). The Claim alleges that the Respondent, His Majesty the King in Right of Canada (Canada or the Crown,), breached its fiduciary obligations by failing to augment or increase the annuity payments of $5 per person pursuant to Treaty 4 in order to offset the impacts of inflation and maintain the purchasing power of the payments (Declaration of Claim at para 3). Pasqua argues further that over time, the relative value of the annuity payments has decreased due to inflation to the point of rendering the annuity payments meaningless in terms of purchasing power (para. 48).

[2] On February 24, 2025, the Respondent submitted an Application for Leave and Notice of Application to strike the Claimant's Declaration of Claim (Application). Canada's position is that none of the conditions precedent for filing the Declaration of Claim with the Tribunal set out in subsection 16(1) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [*SCTA*], have been met. Canada states that the Minister of Crown-Indigenous Relations (the Minister) has until September 20, 2025, to advise Pasqua if the specific claim has been accepted for negotiation. Canada therefore submits that the Declaration of Claim should be struck pursuant to subsection 17(a) of the *SCTA* as "on its face" the Claim is not admissible under sections 14 to 16 of the *SCTA*.

[3] Prior to the enactment of the *SCTA* and the creation of the Tribunal, the Minister had broad discretion to accept, negotiate and resolve specific claims at the Specific Claims Branch (SCB), with no possibility of independent adjudication. The *SCTA* was passed in order to provide certainty and efficiency in resolving long standing specific claims. Subsection 16(1) of the *SCTA* sets out the timelines within which the Minister must decide whether the specific claim will be negotiated at the SCB and notify the First Nation accordingly, among other requirements. Where negotiations fail, or the Minister rejects the specific claim at the SCB, the First Nation may now file a Declaration of Claim with the Tribunal, which acts as an impartial adjudicator.

[4] The issue to be decided on this Application, therefore, is whether the Minister, pursuant to paragraph 16(1)(a) of the *SCTA*, notified Pasqua of its decision not to negotiate the specific claim, in whole or in part, before Pasqua filed its Declaration of Claim with the Tribunal. If this notification was provided, then the Tribunal has jurisdiction to hear the Claim. If not, then,

pursuant to subsection 17(a) of the *SCTA*, the Tribunal does not have jurisdiction to hear the Claim.

II. BACKGROUND

[5] There are a number of complicated aspects to this Application, many of which intersect with the Tribunal's mandate and jurisdiction, and some of which go to the heart of the Canadian justice system's truth-seeking function.

A. Settlement Privilege

[6] Part of the Tribunal's mandate includes the responsibility to "create conditions that are appropriate for resolving valid claims through negotiations" (preamble of the *SCTA*). Where negotiations occur with a view toward settling a legal dispute, the Canadian justice system has determined that these communications are confidential based on a concept called "settlement privilege." The point of settlement privilege is to allow parties to compromise in ways they may be unwilling to in litigation, while preserving their ability to take a less-compromising position if negotiations break down and litigation proves necessary. Creating a zone of confidentiality around settlement discussions allows for frank and honest discussions without the need to consider the potential negative consequences of compromise on litigation. Settlement privilege is an especially important concept at the Tribunal, because negotiated resolutions are the Tribunal's preferred form of resolution.

[7] At the same time, the open court principle is a constitutional principle in the Canadian justice system, and a cornerstone of any democracy. The open court principle dictates that court proceedings, including the evidence presented at them, are generally accessible to the public on the basis that transparency and accountability are important values in a democracy. The open court principle and the principle of settlement privilege can come into conflict if parties need to bring a dispute that arose during negotiations to a court or the Tribunal for resolution. In these instances, the court or Tribunal will need to consider and balance the two competing principles.

[8] This is one of those instances. To resolve the issue to be decided on this Application, it is necessary for the Tribunal to review, analyze and interpret the without prejudice communications between Canada and Pasqua, relied upon by Pasqua to submit that they are tantamount to a rejection to negotiate its specific claim and therefore meet the condition precedent set out in

subsection 16(1) of the *SCTA*.

[9] At the hearing of the Application on April 16, 2025, the Tribunal, after hearing from both Parties on the matter, stated that it agreed that a confidentiality Order is necessary with respect to settlement privileged communications filed by both Canada and Pasqua in the current proceeding. The Tribunal considered that the public is not interested in the documents filed in this proceeding, but if these documents were to be made public, there would be a risk of a significant negative effect on the Parties if they were to negotiate.

[10] For context, the Parties provided a draft confidentiality Order, which the Tribunal issued on April 25, 2025. The Order states as follows:

> [1] All privileged communications and records filed by the Parties in relation to the Respondent's application to strike the Claimant's Declaration of Claim shall be treated as confidential and shall not be accessible by the public or become public documents under subsection 38(1) of the *Specific Claims Tribunal Act*, SC 2008, c 22. This Order extends to all references to privileged communications and records in the materials filed by the Parties; and
>
> [2] Redacted versions of the filed materials shall remain publicly accessible as public documents under subsection 38(1) of the *Specific Claims Tribunal Act*, SC 2008, c 22.

[11] Because of the confidentiality Order in place, parts of the public version of this decision have been redacted. A confidential version of the decision, without redactions, has been provided to the Parties.

B. The Statute and the Jurisprudence

[12] The Tribunal's jurisdiction is derived from the *SCTA*. Subsection 16(1) of the *SCTA* sets out the conditions precedent for filing a Declaration of Claim with the Tribunal. The section provides in part:

> **16(1)** A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and
>
> > **(a)** the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;
> >
> > **(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;...

[13] The issue on this Application is whether communications from Canada to Pasqua constitute a rejection of the claim for negotiation pursuant to paragraph 16(1)(a) of the *SCTA*. The Tribunal considered this issue in *Aundeck Omni Kaning v Her Majesty the Queen in Right of Canada*, 2014 SCTC 1 [*Aundeck*]. In *Aundeck*, Canada believed that the claim was a low value claim that could be settled for under three million dollars. Canada followed its policy for low value claims by writing to the First Nation to make an offer to settle that would expire after 90 days if not accepted. It appears that the First Nation did not accept the offer, but contacted Canada to find out if there was any flexibility in Canada's offer. Canada followed up with two emails to the First Nation. The first said that Aundeck Omni Kaning had not presented Canada with argumentation or evidence that would warrant a re-examination or re-evaluation of the settlement offer. The second email said that the file was closed but that if Aundeck Omni Kaning wished to reconsider Canada's offer of compensation, it could contact Canada.

[14] Shortly thereafter, Aundeck Omni Kaning filed its claim with the Tribunal.

[15] Canada brought an application to dismiss Aundeck Omni Kaning's claim on the basis that the three-year period for negotiations noted in paragraph 16(1)(b) of the *SCTA* had not yet passed, and that the Minister had not notified the First Nation of its decision not to negotiate the claim pursuant to paragraph 16(1)(a).

[16] Justice Smith for the Tribunal held that the emails from Canada indicated that Canada did not intend to discuss its settlement offer with Aundeck Omni Kaning. Justice Smith found that Canada's position regarding the claim as a small value claim was essentially a "take it or leave it" one time offer with a 90-day time limit for acceptance (*Aundeck* at para. 82). Canada's approach "unilaterally foreclosed any consultation or discussion about any of the essential aspect of the claim 'in whole or in part' including its value or how it was to be calculated" (para. 81). Justice Smith stated further that it was not clear what evidence Aundeck Omni Kaning would have to provide in order to reopen the file, because there was no evidence that Canada had shared the information relied upon to arrive at its settlement offer.

[17] In *Aundeck*, the Tribunal reviewed the principles of statutory interpretation in the context of paragraph 16(1)(a) of the *SCTA*. The Tribunal cited, at paragraph 52, the basic propositions of the ordinary meaning rule in statutory interpretation from *Sullivan and Driedger on the*

Construction of Statutes as follows:

> (1) It is presumed that the ordinary meaning of the legislative text is the intended or most appropriate meaning. In the absence of a reason to reject it, the ordinary meaning prevails;
>
> (2) Even where the ordinary meaning of a legislative text appears to be clear, and the consequences of adopting this meaning. They must take into account all relevant indicators of legislative meaning; and
>
> (3) In light of these additional considerations, the court may adopt an interpretation in which the ordinary meaning is modified or rejected. That interpretation, however, must be plausible; that is, it must be one the words are reasonably capable of bearing.
>
> [Ruth Sullivan, *Driedger on the Construction of Statutes*, 3d ed (Toronto: Butterworths Canada, 1994), at p.7]

[18] Sullivan and Driedger define "ordinary meaning" as most often referring to "the reader's first impression meaning, the understanding that spontaneously emerges when words are read in their immediate context—in the words of Gonthier J., 'the natural meaning which appears when the provision is simply read through'" (*Canadian Pacific Airlines v Canadian Air Line Pilots Assn.*, [1993] 3 SCR 724 at p. 735, cited in Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed (Markham, Ont: Butterworths Canada, 2002) at p. 21).

[19] The Tribunal stated further that, in addition to the ordinary meaning approach to statutory interpretation, it is also important to "look to the object or purpose of a statute to better understand and determine what was intended by Parliament" (*Aundeck* at para. 54). Ultimately, Justice Smith held that Canada's communication was a failure to negotiate substantively, and "tantamount to a decision not to negotiate [the claim]", within the meaning of paragraph 16(1)(a) of the *SCTA* (para. 85). Thus, the claim was properly before the Tribunal, and Canada's application was dismissed.

C. Crown-Indigenous Relations and Northern Affairs Canada

[20] To resolve the issue to be decided on this Application, it is important to understand the relevant organizational structure and separate processes of the Ministry of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). Pasqua sent its specific claim submission (Claim Submission) to the attention of the Director General of the SCB in accordance with the Specific Claims Policy (Policy). The SCB is a sector of CIRNAC. The SCB process is limited to addressing historical grievances and cannot resolve issues less than 15 years old and which are

forward looking.

[21] Relevant to this Application is the Treaty and Aboriginal Governance sector (TAG), which is another sector of CIRNAC. The TAG process is broader than that of the SCB. TAG is responsible for negotiating treaties, self-government agreements and other constructive arrangements with First Nations. This includes comprehensive claims, specific claims and some out-of-court settlements.

[22] The process that TAG follows for negotiating and obtaining mandates to negotiate is separate from that of the SCB. TAG does not have authority to speak on behalf of the SCB, nor to accept or reject specific claims for negotiation at the SCB.

[23] Given the nature of Pasqua's specific claim that Canada failed to augment or increase the annuity payments pursuant to Treaty 4, those portions of the specific claim relating to the future indexation of treaty annuities involving the adjustment of periodic economic benefits to reflect inflation, fall outside the Policy. For this reason, CIRNAC proposed the referral of the specific claim to TAG for exploratory discussions. Canada states that Pasqua's specific claim also remained open and under assessment, however, with the SCB.

[24] It is within this context the without prejudice communications are properly considered.

III. THE WITHOUT PREJUDICE COMMUNICATIONS

A. The Originating Process

[25] On March 25, 2022, Pasqua sent its Claim Submission to the SCB (affidavit of former Chief Matthew Todd Peigan (Peigan Affidavit), Exhibit A).

[26] In a letter dated May 16, 2022, the Director General of the SCB acknowledged the Claim Submission and advised Pasqua that the specific claim would undergo early review to determine if it met the minimum standard for filing of claims with the Minister (Peigan Affidavit, Exhibit B).

B. The November 30, 2022, Letter

[27] By letter dated November 30, 2022, the Director General of the SCB advised former Chief Peigan of Pasqua that the specific claim met the minimum standard under the Policy and that

therefore it was filed with the Minister of CIRNAC on September 20, 2022 (Peigan Affidavit, Exhibit C). The letter stated in part:

> Claims related to the indexation of treaty annuities are part of a larger issue involving the adjustment of periodic economic treaty benefits to reflect inflation. The Specific Claims Process is limited to addressing historical grievance and could not resolve issues which are less than 15 years old and forward-looking. Given the unique nature of your grievance, we are proposing an engagement process with CIRNAC to discuss the scope of the claim and a path towards resolution.

[28] The letter went on to state that a senior negotiator would reach out to Chief Peigan shortly to organize a discussion.

[29] Canada submits that the November 30, 2022, letter referred Pasqua to TAG for "exploratory discussions" but, at the same time, Pasqua's specific claim remained open and under assessment with the SCB (Canada's Memorandum of Fact and Law at para. 9). The letter did not reject the specific claim with the SCB, it only proposed a potentially second track to find a resolution.

[30] In oral submissions, Pasqua submitted that, as a result of the letter, it understood that the Minister had rejected the specific claim because it was outside the specific claim process, but that CIRNAC remained seized of the matter and committed to a negotiation process aimed at resolution (see also Pasqua's Memorandum of Fact and Law at paras. 66, 81).

[31] In my view, the letter fails to communicate specifically and in detail what the process will be going forward. In its Reply, Canada states:

> The referral for Pasqua First Nation to engage with TAG due to TAG's ability to secure a potentially broader mandate for negotiation, was not a determination that the Claim Submission could not be resolved through negotiation with the SCB. Rather than removing options from Pasqua First Nation, Canada's actions taken in good faith sought to expand the options for Pasqua First Nation to reach a negotiated settlement. [para. 23]

[32] Unlike the Reply, the letter does not distinguish or explain the proposed TAG process and how that may affect the SCB process. It does not indicate whether the senior negotiator that will reach out to Pasqua is from the SCB or TAG; only that the senior negotiator is from CIRNAC. The letter is unclear whether the CIRNAC engagement process falls outside the scope of negotiations within the SCB or whether the specific claim remained open and under assessment

with the SCB. The author of the letter may have felt such clarity unnecessary given the distinct processes of the SCB and TAG, but it cannot be assumed that those outside government understand the nuances of two sectors of CIRNAC, represented by the same Minister, even where the group, such as Pasqua, is a stakeholder of both sectors.

[33] The lack of clarity caused confusion but, in my view, it is not tantamount to a decision not to negotiate the specific claim within the meaning of paragraph 16(1)(a) of the *SCTA*. Pasqua believed it was engaged with CIRNAC to discuss the scope of the specific claim and path toward resolution, as that is what was communicated to the First Nation. Canada states that neither TAG nor the SCB had a mandate for negotiation. Yet, both parties governed themselves consistent with working together to find a resolution. The option of litigation was not raised by either party as an option. Pasqua did not file a claim with the Tribunal at this time. As the letter indicated, a senior negotiator reached out to Pasqua, a number of meetings were held and Pasqua prepared materials to facilitate a resolution. It was reasonable for Pasqua to believe it was working with CIRNAC to facilitate a resolution. In accordance with the process of reconciliation, after the November 30, 2022, letter, the Parties engaged in good faith efforts to resolve Pasqua's grievances.

C. The Parties' Efforts at Resolution

[34] On July 5, 2023, Tammy Hannibal, Blake McLaughlin and Alexandra Fensome, representatives of TAG (CIRNAC's team), attended a virtual meeting with former Chief Peigan and legal counsel for Pasqua (Pasqua's Memorandum of Fact and Law at para. 9).

[35] Tammy Hannibal, in her affidavit sworn February 18, 2025, affirms that at the July 5, 2023, meeting, she advised the Parties that Canada did not have a mandate to negotiate the issue of annuity payments under the numbered treaties and TAG was attending the meeting in "listening mode." TAG explained to Pasqua and its legal counsel that they had more flexibility for such conversations than the SCB. Pasqua was invited to share any information that could help determine a way forward (affidavit of Tammy Hannibal (Hannibal Affidavit) at para. 6; Canada's Memorandum of Fact and Law at para. 11).

[36] At paragraph 11 of his affidavit sworn on March 13, 2025, former Chief Peigan affirmed that the stated purpose of this meeting was to discuss the resolution of Pasqua's specific claim. He stated that CIRNAC did not advise of the following:

- that they "were in 'listening mode' [as opposed to negotiating]";
- that they "did not have a mandate to resolve Pasqua's Claim"; or
- that the "'unique engagement process' was still within a parallel assessment with the [SCB]."

[37] Former Chief Peigan stated further that Canada's representatives:

> … specifically suggested that Pasqua prepare a draft methodology and framework to guide our efforts towards the settlement of the Claim. … It was suggested that we build parameters not only helpful for our Claim but also consider a wider application across Treaty 4. We discussed the experience negotiating the Treaty 4, 5, and 6 Benefits Framework that was devised to resolve Treaty Benefits Claims in those Treaty areas and it was agreed that this was a good model. [Peigan Affidavit at para. 12]

[38] At this meeting, legal counsel for Pasqua advised that Pasqua had retained David Hutchings to provide expert assistance on the valuation of the specific claim. CIRNAC's team advised that this was a welcome development as they had experience working with David Hutchings in relation to the Robinson Huron Treaty Annuities Claim (Peigan Affidavit at para. 13). Also, Pasqua later retained a forensic accountant to assist with managing the analysis of population data provided by Canada (Peigan Affidavit at para. 19).

[39] On July 6, 2023, Pasqua emailed CIRNAC's team, attaching the Claim Submission filed under the SCB process. Pasqua also stated that "[a]s promised" it was working on a "methodology and framework to advance this matter with your Team" (Peigan Affidavit, Exhibit D).

[40] In a letter dated November 15, 2023, Pasqua provided CIRNAC's team with its proposed method and framework for the resolution of the specific claim (Proposed Method and Framework). The letter proposed a model for calculation of compensation regarding the specific claim in two phases. In the first phase, the present value of the lost annuities would be calculated up to 2024. For the second phase, the letter proposed continued discussions "in the spirit of Treaty renewal to co-develop a framework to address the implementation (and modernization) of the Treaty Annuities Promise for the period 2025 into the future" (Peigan Affidavit, Exhibit J). The letter went on to suggest that "[i]n collaboration, the parties can work together and set out a statement of the [p]arties' intentions with respect to the co-development of the Future Implementation."

[41] Canada submits that Pasqua's Claim Submission filed with the SCB on March 25, 2022, was limited to seeking past compensation for Canada's alleged breach of Treaty 4 and failure to index the treaty annuity payments in the past. However, Pasqua's Proposed Method and Framework included a future implementation component for the determination of compensation. In oral submissions, Canada submitted that even if the SCB had accepted the specific claim for negotiation, it could not deal with the claim for compensation over the previous 15 years or the future, and that Canada was trying to find Pasqua a "one stop shop." TAG had the potential to obtain a mandate to deal with both the past and future aspects of the methodology and framework. In that case, said Canada, the file could then be transferred from the SCB to TAG.

[42] Pasqua submits that it prepared its Claim Submission in good faith as a result of the request from Canada to prepare a draft methodology for resolution of the specific claim. Pasqua invested "significant time and resources" in preparing a methodology (Pasqua's Memorandum of Fact and Law at para. 11; Peigan Affidavit at paras. 16–21).

D. The Breakdown of Efforts of Resolution

[43] By email dated December 18, 2023, Tammy Hannibal informed Pasqua that they were appreciative of Pasqua's November 15, 2023, correspondence and were reviewing it. She advised further:

> As we had indicated earlier in the summer, we note that while our department does not currently have government direction to negotiate Pasqua First Nation's claim outside of the existing Specific Claims process, Pasqua First Nation's specific claim, filed on September 20, 2022, is still within in the three-year timeline for Canada to reach a decision to accept or not accept this claim for negotiation. [Hannibal Affidavit, Exhibit B]

[44] Former Chief Peigan states that:

> At no time prior to receiving Ms. Hannibal's December 18, 2023 email was I ever informed or made aware by Ms. Hannibal or by anyone else from her team that CIRNAC did not have a mandate to resolve the Claim and that the Claim was instead still being assessed by the Minister and was within the three-year time period set out in the *Specific Claims Policy and Process Guide*. [Peigan Affidavit at para. 26]

[45] On December 20, 2023, Pasqua responded to Canada in relevant part as follows:

> … your correspondence of November 30, 2022, expresses an opinion that this Claim is not within the jurisdiction of the *Specific Claims Tribunal Act*. The stated

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> purpose of your proposed engagement with Pasqua is to determine whether we can find a unique path towards resolution. To this end, you requested and we prepared a framework for this engagement. We remain committed to this effort insofar as it leads to a meaningful resolution. [Peigan Affidavit, Exhibit K]

[46] Canada did not respond in writing to this email (Peigan Affidavit at para. 29).

[47] On January 8, 2024, Tammy Hannibal met with Chief Peigan and Pasqua's legal counsel virtually and advised that the Proposed Method and Framework, as requested and submitted, was under review.

[48] Former Chief Peigan provided his brief point form notes from this meeting as an attachment to his affidavit (Exhibit L). The notes attributed the following statements to Tammy Hannibal:

- Submitted as a specific claim – limited to what specific claims department can do
- Need to develop a process to address the $5 annual treaty payment
  - What is it going to look like going forward
- Preparation that is happening in regards to looking for the mandate.
  - Leg work and analysis has been done by PFN [Pasqua] and Canada
  - When receive mandate to proceed, letter will be sent to PFN [Pasqua] in regards to mandate
- While seeking mandate outside of specific claims process, we can have exploratory process.
  - Collect info PFN [Pasqua] needs
  - Exploring PFN [Pasqua] views and interest

[49] On January 9, 2024, former Chief Peigan wrote to Valerie Gideon, who was the Associate Deputy Minister of Indigenous Services Canada at that time. He summarized Pasqua's Treaty 4 Annuities Real Value Claim and noted recent meetings with CIRNAC's team regarding the specific claim. He also provided Pasqua's Proposed Method and Framework to her, suggesting that this could be used to resolve Pasqua's specific claim.

[50] On February 13, 2024, Tammy Hannibal met virtually with former Chief Peigan and Pasqua's legal counsel (Canada's Memorandum of Fact and Law at subpara. 12(d)). Former Chief Peigan, in his notes from this meeting, attributed to Tammy Hannibal the following statement:

- Dep't is still searching for a mandate from Canada to proceed with annuities [Peigan Affidavit, Exhibit O]

[51] Tammy Hannibal stated at the meeting that Pasqua was referred to her team because the Policy only provides authority to negotiate for past losses, and that for TAG to negotiate with Pasqua, they had to seek a mandate. She advised Pasqua that although there was no current mandate to negotiate, internal work was being done to seek a mandate. She could not provide a precise timeline for that work but confirmed that should a mandate be received by TAG, her team would then be in a position to discuss a negotiated process.

[52] Pasqua submits that the February 13, 2024, meeting was a "brief phone call" and that "[n]othing of substance was discussed on this call" (Peigan Affidavit at para. 33). It does not seem as if Pasqua understood from this call that TAG did not have a mandate to negotiate.

E. The April 8, 2024, Letter from the Deputy Minister of CIRNAC

[53] On April 1, 2024, Pasqua followed up with Canada requesting a formal response to Pasqua's framework and methodology and "a formal update of Canada's intention to resolve this matter with Pasqua extra-judicially" (Peigan Affidavit, Exhibit Q).

[54] Valerie Gideon, then the Deputy Minister of CIRNAC, responded to former Chief Peigan in a letter which the Parties agree was sent on April 8, 2024. In the letter, she thanked former Chief Peigan for the insights related to the Treaty 4 Annuities Claim that he had shared in his January 9, 2024, letter. Valerie Gideon's letter went on to say:

> Although it is Canada's preference to resolve claims through negotiation rather than litigation, Canada does not have a mandate to negotiate the indexation of annuities with Pasqua First Nation. Please let me assure you that Pasqua First Nation's desire to negotiate this matter with Canada has been registered and, should Canada obtain a mandate to negotiate, Canada will provide Pasqua First Nation with an offer to enter negotiations. [Peigan Affidavit, Exhibit R]

[55] A few months after Valerie Gideon's letter, on July 14, 2024, Tammy Hannibal sent legal counsel for Pasqua an email that stated as follows:

> Just checking in as a follow up to our conversations earlier this year with Pasqua FN. Let me know if you have time for a quick call. [Partial Reply to Undertakings on Behalf of the Respondent—in respect of the cross-examination of Tammy Hannibal on March 7, 2025—at p. 11]

[56] The evidentiary record does not include any response from Pasqua to this email.

IV. POSITIONS OF THE PARTIES

[57] Canada argues that the Claim is outside of the Tribunal's jurisdiction and should be struck under subsection 17(a) of the *SCTA* as it has not met the conditions precedent set out in subsection 16(1) of the *SCTA*. Canada argues further that CIRNAC has not made a decision on whether to negotiate Pasqua's specific claim, and the communications made by Canada to Pasqua regarding its specific claim were not a refusal to negotiate. Canada submits, therefore, that the three years have not elapsed since Pasqua's specific claim was filed with the Minister, and that the Minister has until September 20, 2025, to determine whether it will accept the specific claim for negotiation. Pasqua is therefore precluded from filing the Claim with the Tribunal until after that date (Canada's Memorandum of Fact and Law at para. 3).

[58] Pasqua relies on the language of the preamble to the *SCTA* and submits that the Tribunal process was set up in the interests of reconciliation. It was intended to establish clear rules for when a claim may be filed with the Tribunal. In oral submissions, Pasqua submitted further that the *SCTA* was intended to promote transparency, certainty and accountability, and that it is not in accordance with reconciliation for Canada to use paragraph 16(1)(a) as a mechanism by which Canada can delay making a decision until the 11^{th} hour "just because they can."

[59] Pasqua argues specifically that both the November 30, 2022, letter signed by the Director General of the SCB and the April 8, 2024, letter signed by the Deputy Minister of CIRNAC, constitute a rejection of Pasqua's specific claim for negotiation in the SCB process as set out in paragraph 16(1)(a) of the *SCTA*. Therefore, Pasqua had the right to file the Claim with the Tribunal for resolution.

V. ANALYSIS

[60] In my view, the issue to be resolved on this Application turns on the letter of April 8, 2024, interpreted in context with the without prejudice communications, the actions of the Parties, the interpretation of section 16 of the *SCTA* and the application of the Tribunal's decision in *Aundeck*.

[61] Pasqua submits that this letter, in stating that Canada did not have a mandate to negotiate Pasqua's specific claim, communicated the Minister's decision not to negotiate the specific claim

in whole or in part. Pasqua highlights that the letter identifies the two options for resolving the specific claim—negotiation or litigation. A reasonable person in the shoes of Pasqua, it is argued, would have understood this letter to be a rejection of their specific claim for negotiation. Pasqua understood that it should now litigate the specific claim by filing it with the Tribunal.

[62] Canada submits that this letter did not foreclose the possibility of the specific claim being negotiated, and that the Minister has until September 20, 2025, to decide whether to negotiate the specific claim. Canada submits further that the Deputy Minister of CIRNAC does not have the authority to accept or reject specific claims for negotiation, and that only the Assistant Deputy Minister responsible for the specific claims process is authorized by the Minister to exercise the authority given to the Minister of CIRNAC regarding the acceptance or non-acceptance of specific claims for negotiation.

[63] The *SCTA* is intended to promote reconciliation between First Nations and the Crown by resolving specific claims in a just and timely manner. Paragraph 16(1)(a) of the *SCTA* provides certainty to First Nations with respect to the timeline for a decision by the Minister on whether or not to accept a specific claim for negotiation at the SCB. Canada's communications with respect to the SCB process for Pasqua's specific claim, however, have neither been clear nor transparent. They have not provided Pasqua with the certainty regarding the process that Canada has recognized as a core principle of the *SCTA*.

[64] Prior to December 2023, former Chief Peigan was not provided with sufficient clarity to fully understand that the specific claim was still being assessed by the Minister pursuant to the Policy. Rather, Pasqua believed it was working with CIRNAC to find a unique path toward resolution. It devoted significant time and resources at Canada's request to prepare a draft methodology designed to assist in resolving the specific claim. Having been advised that the specific claim was still being assessed at the SCB, Pasqua nonetheless continued to hope for a meaningful resolution. On April 1, 2024, Pasqua asked Canada to formally respond to Pasqua's framework and methodology submitted at Canada's request on November 15, 2023. Pasqua asked Canada directly for a formal update of Canada's intention to resolve this matter with Pasqua extra-judicially.

[65] In response to that direct question, Pasqua is advised, in the letter of April 8, 2024, that

Canada would prefer to resolve specific claims through negotiation rather than litigation, but it does not have a mandate to negotiate. The letter does go on to advise that Canada will give Pasqua an offer to enter negotiations should it obtain a mandate to negotiate but it does not say that Canada is working on obtaining a mandate, or provide any timeframe within which it would follow up to explain progress made on obtaining a mandate. The lack of clarity in the letter on these key issues is regrettable, given that the *SCTA* was intended to provide certainty for all parties, and that the Tribunal has a role in promoting the just, timely and cost effective resolution of claims. After almost 17 months of spending significant time and resources to resolve this matter, Pasqua is told there are two options to do so, negotiation or litigation, and that negotiation, Pasqua's desire, is off the table.

[66] The April 8, 2024, letter says that Canada does not have a mandate to negotiate the indexation of annuities with Pasqua. In my view, it was reasonable for Pasqua to assume that this letter related not just to its specific claim for indexation of future annuities but also its specific claim for past compensation for two reasons. First the April 8, 2024, letter is in response to Pasqua's letter of January 9, 2024, in which it discussed both past and future compensation. Second, it is unreasonable to assume that Pasqua, as a party outside the federal bureaucracy, could distinguish between the different sectors of CIRNAC. It was reasonable to assume that Pasqua interpreted the April 8, 2024, letter from the Deputy Minister of both the SCB and TAG, constituted a rejection of its specific claim for both past and future compensation, including the portion of its specific claim for which the SCB had a mandate. The letter is from the Deputy Minister of CIRNAC. TAG and the SCB have the same Deputy Minister (affidavit of Kelsey Gabel, Exhibit A (transcript of Tammy Hannibal's cross-examination on March 7, 2025) at p. 34, lines 23–25). Paragraph 16(1)(a) of the *SCTA* does not specify that the Assistant Deputy Minister of the SCB must sign the letter, only that the Minister must have notified the First Nation of a decision not to negotiate the claim, nor does it prescribe a certain form of notification be given to the First Nation. The SCB has adopted a prescribed form of the letter, but that prescribed form was not used here.

[67] The letter advises Pasqua that Canada does not have a mandate to negotiate. It does not refer to CIRNAC, the SCB or TAG. The evidentiary record fails to sufficiently demonstrate that the internal differences and authorities between the two sectors was ever clearly explained to Pasqua. It is reasonable to believe that the Deputy Minister had the power to convey the Minister's

decision. It is not reasonable for Canada to assume that Pasqua understood that this letter related only to the TAG process. There was no indication that the clock continued to run on the Minister's review of the specific claim at the SCB. The detail of the informal email of December 18, 2023, referring to the specific claims process was not included. If Canada had wanted to convey this important detail to Pasqua, Canada should have made this clear, either with a face-to-face dialogue providing a space for questions, answers and clarity or in a more clearly written detailed letter, similar to the email of December 18, 2023.

[68] Canada invited the Tribunal to consider internal documents limiting the delegation of authority within CIRNAC (Partial Reply to Undertakings on Behalf of the Respondent—in respect of the cross-examination of Marie-Laurence Daigle on March 12, 2025—at p. 7). These documents were not available to Pasqua at the time it received the April 8, 2024, letter and are therefore not relevant to a consideration of whether it was reasonable for Pasqua to conclude that a letter signed by the Deputy Minister of CIRNAC had the authority to convey the Minister's decision.

[69] Upon receipt of the April 8, 2024, letter, Pasqua's next action was to file its Claim with the Tribunal, on July 24, 2024. This action supports Pasqua's submission that it believed that the April 8, 2024, letter was a rejection of its specific claim for negotiation at the SCB. In my view, for reasons set out above, this conclusion was reasonable.

[70] Canada argues that the decision of the Tribunal in *Aundeck* is distinguishable. In this decision, it is argued, the Tribunal considered a letter sent to a First Nation offering to settle on a "take it or leave it" basis, with a 90-day time limit for acceptance and no further opportunity for negotiations. Canada says that in *Aundeck*, because the claim submission file was closed following the expiration date of the offer to settle, it was clear that Canada's intention was to end negotiations. By contrast, Canada submits, in the instant case, Canada attempted in good faith to address Pasqua's grievances in a broader engagement process with TAG, outside the scope of the SCB process. Although these attempts did not result in a negotiation mandate, Canada, by proposing the alternative process, did not communicate a refusal to negotiate the matter in the SCB process (Canada's Memorandum of Fact and Law at paras. 32–34).

[71] I agree that Canada attempted in good faith to address Pasqua's grievances in a broader engagement process with TAG, outside the scope of the SCB process. Unfortunately, however, it

failed to communicate this to Pasqua with sufficient clarity. The problems began with the November 30, 2022, letter proposing a path toward resolving Pasqua's grievances. As previously stated, the November 30, 2022, letter fails to distinguish between the two sectors of CIRNAC, to specify the sector to which the senior negotiator belonged, or to explain how this would affect the specific claim before the SCB. At no time prior to December 18, 2023, did Pasqua understand that the specific claim was still being assessed at the SCB. Although this was clarified by an email on December 18, 2023, in response to a direct question as to whether the specific claim could be resolved extra-judicially, the April 8, 2024, letter again does nothing to distinguish between the SCB and TAG processes, advising only that Canada does not have a mandate to negotiate. A reasonable person receiving this letter, considering the without prejudice communications as a whole and the efforts made to resolve the specific claim over almost 17 months, would conclude that Canada could not offer negotiation as an option for resolution of the specific claim and that litigation was the only remaining option.

[72] In my view, therefore, as in *Aundeck*, the letter of April 8, 2024, was "tantamount to a decision not to negotiate [the claim]" for the purposes of paragraph 16(1)(a) of the *SCTA*. Accordingly, the condition precedent in paragraph 16(1)(a) has been met and Pasqua's Claim is properly before the Tribunal.

VI. DISPOSITION

[73] For reasons set out above, Canada's Application is dismissed. Canada shall have 30 days from the release date of this decision to file its Response to the Declaration of Claim with the Tribunal.

VII. A FINAL WORD

[74] This is a unique case. Contrary to the intent of subsection16(1) of the *SCTA*, Canada's April 8, 2024, correspondence created confusion, not certainty with respect to its decision to accept Pasqua's specific claim for negotiation. The letter reasonably suggests litigation as the only remaining option.

[75] Canada stated in oral submissions that by proposing the engagement process with TAG it was trying to be fair and efficient for all parties. As set out above, under the TAG process, Canada

could potentially secure a broader negotiation mandate that could deal with Pasqua's specific claim for future compensation based on the Treaty 4 Annuities Claim. Similarly, Pasqua stated in oral submissions that it had worked very hard, hand in hand with CIRNAC over many years to resolve specific claims, and that it viewed its strong relationship with Canada with pride.

[76] The Parties differ in their interpretations of the correspondence and communications and in their understanding of what transpired at meetings, but clearly both Parties were committed to trying to find a way to resolve Pasqua's specific claim, including Pasqua's broader claim regarding compensation for the previous 15 years and into the future based on the indexation of the annuities payable under Treaty 4.

[77] In *Quebec (AG) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para. 148, the Supreme Court of Canada recently held:

> The underlying purpose of the principle of the honour of the Crown is to facilitate the reconciliation of the Crown's interests and those of Indigenous peoples, including by promoting negotiation and the just settlement of Indigenous claims. This purpose transcends the corrective justice at the heart of private law to make room for repairing and maintaining the special relationship with the Indigenous peoples on whom European laws and customs were imposed. This is what I will call justice linked to reconciliation or reconciliatory justice. [citations omitted]

[78] In my view, both Parties were acting in good faith. More specifically, the evidence fails to establish that Canada was not acting in accordance with the honour of the Crown. I accept that Canada referred the matter to TAG sincerely hoping that the greater flexibility afforded to TAG would allow for a resolution of the portions of Pasqua's specific claim that did not fit within the Policy. As more detailed above, its failure was in communicating the purpose, intent and result of some of the meetings to Pasqua with sufficient detail and clarity. What occurred was honest miscommunication between the Parties as to the purpose and intent of some of the meetings and written communications they shared.

[79] Honest miscommunications will happen from time to time as Canada and a First Nation, acting in good faith, work diligently to resolve complex issues, sometimes hundreds of years in the making. In *Carry the Kettle v His Majesty the King in Right of Canada*, Tribunal file number SCT 5001-13, the Tribunal successfully mediated the resolution of a disagreement between the SCB and a First Nation on the interpretation of paragraph 16(1)(a) of the *SCTA*. When such

miscommunications occur, the parties are encouraged to work together to find a mutually acceptable compromise solution, outside of litigating the conflict. It is within these difficult yet diligent efforts that the process of reconciliation is best served.

V. Chiappetta

Honourable Victoria Chiappetta, Chairperson

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20250724

File No.: SCT-5003-24

OTTAWA, ONTARIO July 24, 2025

PRESENT: Honourable Victoria Chiappetta, Chairperson

BETWEEN:

PASQUA FIRST NATION

Claimant (Respondent)

and

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

Respondent (Applicant)

COUNSEL SHEET

TO: **Counsel for the Claimant (Respondent) PASQUA FIRST NATION**
As represented by Ryan Lake and Anjalika Rogers
Maurice Law, Barristers & Solicitors

AND TO: **Counsel for the Respondent (Applicant)**
As represented by Gabriela Fuentealba and Evan Morrow
Department of Justice

Confidential and unredacted version

This is Exhibit "F" referred to in the Affidavit of

HEAVEN DESCHAMPS

Affirmed before me on this 1st day

of December, 2025

Kelley Humber

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Alberta

SCT File No.: SCT-5003-24

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

PASQUA FIRST NATION

Claimant

- and -

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

Respondent

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

This Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure.*

TO: Pasqua First Nation
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Anjalika Rogers, and Geneviève Boulay
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OVERVIEW

1. His Majesty the King in right of Canada (Canada) is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation, and partnership. This commitment exists within the context of litigation and beyond. Canada endeavours to embody these principles as it assists the Specific Claims Tribunal ("Tribunal") in its task of adjudicating matters brought before it.

2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. As this matter evolves and the historical record is assembled and analyzed, Canada will continue to consider all appropriate forms of resolution. Further, Canada recognizes the significant role treaty-making has played in building Canada and the contemporary importance of treaties as foundations for continuing progress toward reconciliation.

3. This claim pertains to Treaty 4, or the Qu'Appelle Treaty, which was signed on September 15, 1874, and makes provision for the annual payment of a specified sum of money to each beneficiary under the treaty, commonly referred to as the Annuity Payment. The Annuity Payment in Treaty 4 is twenty-five dollars ($25) to each Chief, fifteen dollars ($15) to each Headman (Councillor) (not exceeding four in each band), and five dollars ($5) to every other treaty beneficiary.

4. Canada recognizes an ongoing legal obligation to make Annuity Payments to its treaty partners in perpetuity, including to Pasqua First Nation as a signatory to Treaty 4. Canada acknowledges the Treaty 4 right to the Annuity Payments is recognized and affirmed by section 35 of the *Constitution Act, 1982*. Canada values its ongoing dialogue with First Nations on the interpretation of agreements like Treaty 4, and the role of these agreements in the ongoing relationship between treaty First Nations and the Crown.

5. The Treaty 4 annuity obligation should be considered in the greater context of the treaty relationship, including the social policy measures that have benefited First Nations. The Treaty 4 annuity obligation is financial consideration provided by Canada over an infinite period of time, rather than as a lump sum. In

accordance with the words of the Treaty, the annuities obligation is confined to the specific amounts set out in the text of Treaty 4 payable in Canadian dollars. Canada is not under a duty or obligation to adjust, index for inflation, or otherwise "modernize" the Annuity Payments. The parties to the Treaty intended that the annuity obligation would ensure the provision of the fixed payment specified in the text of Treaty 4. Canada has accordingly paid the specific unadjusted amounts set out in Treaty 4 from the date of Treaty adhesion.

6. In this Response, Canada periodically uses terminology now recognized as antiquated. Canada does so only when required for legal accuracy or when referring to, or quoting from, historical sources.

I. Status of Claim (Rule 42(a))

7. Canada admits Pasqua First Nation is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act,* SC 2008, c 22 ("*SCTA*"), as pleaded in paragraph 1 of the Declaration of Claim ("Claim").

8. Canada admits paragraphs 3 and 4 of the Claim including that:

    a. Pasqua First Nation submitted a claim to the Minister of Crown-Indigenous Relations on March 20, 2022 (the "Claim Submission"), which asserted breaches of fiduciary and other obligations resulting from Canada's failure to index annuities paid under Treaty 4; and

    b. by letter dated November 30, 2022, Canada advised Chief Peigan of Pasqua First Nation that its Claim Submission met the minimum standard to be filed with the Minister and that the Claim Submission was filed with the Minister on September 20, 2022.

9. Canada asserts settlement privilege over the communications referenced in paragraphs 5 and 6 of the Claim.

10. In February 2025, Canada brought an application to strike Pasqua First Nation's Claim on the basis that the Minister of Crown-Indigenous Relations had not made a decision on whether to negotiate the Claim and three years had not elapsed

since Pasqua First Nation's Claim was filed with the Minister on September 20, 2022. Canada disputed that Crown Indigenous Relations and Northern Affairs' December 2023 and April 2024 correspondence to Pasqua First Nation were tantamount to a rejection of the Claim for negotiation as alleged in paragraph 6 of the Declaration of Claim. Canada asserted that the Claim failed to meet the conditions to be filed with the Tribunal as set out in subsection 16(1) of the *SCTA*.

11. On July 24, 2025, the Tribunal dismissed Canada's application to strike the Claim. The Tribunal determined that the April 2024 letter was tantamount to a decision not to negotiate Pasqua First Nation's specific claim and that the condition to filing with the Tribunal in paragraph 16(1)(a) of the *SCTA* was met.

12. On December 23, 2024, Pasqua First Nation commenced a proposed class action in the Saskatchewan Court of King's Bench (SKKB Action) in which Pasqua First Nation is a proposed representative plaintiff.[1] The SKKB Action is based on the same or substantially the same facts of this Claim, relates to the same assets as in this Claim, and could result in a decision irreconcilable with a Tribunal decision of this Claim.

13. At the date of this Response, Pasqua First Nation is actively proceeding with the SKKB Action. Pasqua First Nation has filed an application for certification of the SKKB Action and the date for the certification hearing has been set for September 8 to 10, 2026.

14. On February 7, 2025, Pasqua First Nation advised the Tribunal and Canada that if Canada's application to strike the Claim were dismissed, Pasqua First Nation would discontinue the SKKB Action.

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[1] *Little Black Bear First Nation and Pasqua First Nation*~~*, and on behalf of all Treaty 4 First Nations, and Chief Clarence Bellegarde, on his own behalf and on behalf of all members of the Little Black Bear First Nation and on behalf of all members of Treaty 4 First Nations, Chief Matthew T. Peigan, on his own behalf and on behalf of all members of the Pasqua First Nation and on behalf of all members of Treaty 4 First Nations*~~ *v Attorney General of Canada,* Saskatchewan Court of King's Bench Docket: RG-20892-2024, as amended.

15. At the date of this Response, Pasqua First Nation has not discontinued or immediately sought adjournment of the SKKB Action and continues to take steps in that proceeding.

16. In its endorsements of January 9 and 30, 2025, the Tribunal directed Canada to limit the issues in its application to strike to those related to the Tribunal's jurisdiction under subsection 16(1) of the *SCTA* to facilitate the timely determination of the application. Considering this direction, Canada retains the right to bring a future application under sections 14, 15, 17, or 37 of the *SCTA*.

II. Canada's Position with Respect to Validity of the Claim (Rules 42(b) & (c))

17. In response to paragraph 8 of the Claim, Canada denies that all the claims asserted by Pasqua First Nation are properly grounded under subsection 14(1) of the *SCTA*. In response to paragraphs 9 and 41 of the Claim, Canada admits the claim in these paragraphs is properly grounded under paragraphs 14(1)(a) and 14(1)(c) of the *SCTA* on the basis that Treaty 4 Annuity Payments constitute "other assets" under those paragraphs. Canada denies that the facts as plead, or at all, establish a valid claim under the *SCTA*. In response to paragraphs 11 and 42 of the Claim, Canada says the claims in the alternative are not based on any of the enumerated grounds in subsection 14(1) of the *SCTA* and are therefore outside the jurisdiction of the Tribunal.

18. In response to paragraph 10 and in further response to paragraph 11 of the Claim, Canada says Pasqua First Nation is barred from claiming compensation for annuities paid within the 15 years preceding September 20, 2022, under paragraph 15(1)(a) of the *SCTA*.

19. As of the date of this Response, there are several collective actions related to the indexation or augmentation of annuities under Treaty 4, based on substantially the same facts asserted in the Claim, wherein Pasqua First Nation or its members are part of, or could be part of, the proposed class of represented plaintiffs.[2]

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[2] *Chief Nepinak and Chief Bonny Lynn Acoose v His Majesty the King,* Federal Court Docket: T-199-24; *Chief Murray Clearsky v Attorney General of Canada,* Manitoba Court of King's Bench Docket:

Canada reserves the right to make all representations and submissions regarding the application of subsection 15(3) of the *SCTA* if a class action is certified or a representative action on behalf of all beneficiaries of Treaty 4, including Pasqua First Nation or its members, proceeds concurrently with this Claim.

20. Canada is not required by Treaty 4, any fiduciary duty, the honour of the Crown, or any legal or equitable obligation to discharge its Annuity Payment obligations in the manner asserted by Pasqua First Nation. Canada states that the breaches asserted by Pasqua First Nation in its Declaration of Claim (as described in paragraphs 9 to 11 and 41 to 53 inclusively) did not occur. Canada does not have a legal duty to adjust its Annuity Payment obligations under Treaty 4 based on purchasing power, comparative value of monetary amounts, or any form of indexation or augmentation. Canada did not have any fiduciary or other equitable or honourable obligation to negotiate a clause providing for the indexation or augmentation of treaty annuities over time, nor can such an assertion ground a claim filed with the Tribunal under subsection 14(1) of the *SCTA*.

21. In further response to paragraphs 41 to 48 of the Claim, Treaty 4 is a *sui generis* agreement, which was solemnly entered into between the Crown and signatories or adherents with the intention of having legal effect. Pasqua First Nation's right to Annuity Payments is defined entirely in Treaty 4. The amount and timing of the Annuity Payments was a specific negotiated term of Treaty 4 and reflects the common intention of the Treaty 4 partners. The rights set out in Treaty 4, including the right to Annuity Payments, are recognized and affirmed under section 35 of the *Constitution Act, 1982*. However, the right to a Annuity Payment does not include a right to augmentation as Pasqua First Nation asserts. Treaty 4 is silent as to inflation and does not include an augmentation clause of any kind.

CI 24-01-44854; *Little Black Bear First Nation and Pasqua First Nation*~~*, and on behalf of all Treaty 4 First Nations, and Chief Clarence Bellegarde, on his own behalf and on behalf of all members of the Little Black Bear First Nation and on behalf of all members of Treaty 4 First Nations, Chief Matthew T. Peigan, on his own behalf and on behalf of all members of the Pasqua First Nation and on behalf of all members of Treaty 4 First Nations*~~ *v Attorney General of Canada*, Saskatchewan Court of King's Bench Docket: RG-20892-2024, as amended.

22. In further response to paragraphs 42, 44, and 49 to 53 of the Claim, Canada acknowledges that although the honour of the Crown governs treaty implementation and guides all interactions with First Nation peoples, the honour of the Crown does not create a legal obligation in itself and does not give rise to the performance of specific obligations in the circumstances of this case. Canada further acknowledges that the relationship between the Crown and First Nation signatories or adherents of Treaty 4, including Pasqua First Nation, is a fiduciary one, and in certain circumstances the relationship may give rise to fiduciary obligations. However, Canada does not owe such obligations to Treaty 4 beneficiaries in the circumstances of this case. Canada has not undertaken discretionary control over any specific, cognizable, and communal interest of Pasqua First Nation with respect to Annuity Payments, which is a treaty right that arises solely from the Crown's executive treaty-making function.

23. In further response to paragraphs 44 to 53 of the Claim, the honour of the Crown requires Canada to take a broad and purposive approach to the interpretation of Treaty 4, and to act in good faith, with diligence, integrity, and fair dealing when implementing the terms of the Treaty. Canada's interpretation and implementation of the Treaty 4 annuity provision is consistent with the honour of the Crown. Since Treaty 4 was executed, Canada has fulfilled its obligations to Pasqua First Nation under the Treaty 4 annuity provision.

III. Canada's Position with Respect to Assertions of Fact

24. In response to paragraph 12 of the Claim, Canada admits that on June 23, 1870, the *Rupert's Land and North-Western Territory Order* admitted Rupert's Land and the North-Western Territory to the Dominion of Canada and states that Rupert's Land was concurrently transferred to the Dominion of Canada from the United Kingdom ("Rupert's Land Transfer"). The admission and transfer were subject to certain conditions including the payment of £300,000 by Canada to the Bank of England to the credit of the Hudson's Bay Company when Rupert's Land was transferred to the Dominion of Canada.

25. In response to paragraph 13 of the Claim, Canada acknowledges that expansion into the North-West Territories presented challenges and disrupted the traditional lifestyle of First Nations occupying that territory. Canada acknowledges the treaty process after Confederation was driven by a desire by Canada to open up the west for settlement, immigration, and trade, and to obtain peace with Indigenous nations inhabiting the territory. Canada acknowledges that the Crown-Indigenous treaty process typically involved taking surrenders of First Nation lands in consideration for various one-time and perpetual benefits to the First Nation treaty signatories or adherents.

26. In response to paragraph 14 of the Claim, Canada admits that between 1871 and 1921, the Crown entered into Treaties 1 through 11 (collectively the "Numbered Treaties"). Canada further acknowledges that one of the purposes of the Numbered Treaties included the Crown's intention to open up the west for settlement, immigration, trade and other purposes. Canada also acknowledges that Treaties 2, 4, 5, 6, 8 and 10 cover the area that is now known as Saskatchewan.

27. In further response to paragraph 14 and in response to paragraph 16 of the Claim, Canada admits the Numbered Treaties provide for several specific and enforceable benefits to signatory First Nations in exchange for their consent to surrender their lands and open up the area covered by the treaties to settlement, immigration, and trade. With respect to Treaty 4 specifically, these promises included the provision of annuities, in perpetuity, of five dollars ($5) per person per year for each member of a signatory or adherent First Nation. The parties to Treaty 4 intended Annuity Payments to be confined to the specific amounts in the text of Treaty 4. Other benefits under Treaty 4 included, among other things, the payment of an initial present, the provision of agricultural benefits, and the provision of reserve land entitlements, including the promise to set apart land for the exclusive use and benefit of Treaty 4 signatories or adherents.

28. In response to paragraph 15 of the Claim, Canada does not accept Pasqua First Nation's characterization of the Numbered Treaty negotiations as being generally "fraught with conflict". Canada acknowledges the Rupert's Land Transfer gave

rise to questions and grievances by some Indigenous persons inhabiting what had been Rupert's Land and the North-Western Territory. Canada further acknowledges that during the negotiation of Treaty 4, Chief Pasqua or "Pisqua" expressed that the moneys paid to the Hudson's Bay Company for the Rupert's Land Transfer should have been paid to First Nations.

29. In response to paragraph 17 of the Claim, Canada says that treaties negotiated in proximate time periods and regions were similar in form, scope, and content. However, Canada denies that it intended to establish or established a clear set of uniform treaty terms during its long history of treaty-making with Indigenous nations. Canada says the terms of each Crown-Indigenous treaty were ultimately informed by the individual circumstances of the treaty signings and the objectives of the parties at the time of negotiation and entering into treaty.

30. In response to paragraph 18 of the Claim, Canada says the perpetual nature of the opening-up of land for settlement called for a reciprocal commitment from the Crown, which included the payment of annuities. Beginning in 1818, the Crown changed the compensation model for land surrenders and began paying perpetual annuities rather than large one-time distributions or lump sum payments to signatory First Nations.

31. In further response to paragraph 18 of the Claim, Canada acknowledges that shortly after an uprising against the British by various First Nations in 1763 and the conclusion of the Seven Years War in 1760, the British Crown issued the *Royal Proclamation, 1763,* (GB), 3 Geo 3 (reproduced in RSC 1985, App II, No 1) (the "*Royal Proclamation*"). The *Royal Proclamation* addressed a number of matters, including the British Crown's policy towards Indigenous peoples regarding land. Through that policy, the British Crown declared its intention to observe the common law right of Indigenous peoples to their lands and to refrain from alienating those lands absent consent. With respect to lands located outside the provinces of Quebec (which then included present day Quebec and much of southern Ontario), Nova Scotia, St. John's Island (present day Prince Edward Island), and Newfoundland, the Hudson's Bay Company territories and the thirteen American colonies, the policy enunciated in the *Royal Proclamation*

forbade the purchase of and settlement on those lands. With respect to lands within the aforesaid provinces and colonies, but not the Hudson's Bay Company territories, the policy forbade settlers from obtaining lands directly from Indigenous peoples and established a procedure for such purchases should Indigenous peoples desire to sell lands. Canada acknowledges that the *Royal Proclamation* stated the principle that an Indigenous interest in land is inalienable except upon surrender to the Crown.

32. In response to paragraph 19 of the Claim, Canada admits that:

a. on July 18, 1817, the Earl of Selkirk entered into treaty with the "Chippeway or Saulteaux Nation" and the "Killistine or Cree Nation" for the surrender to the Crown of lands adjacent to the "Red River" and "Ossiniboyne River". Canada further acknowledges that in consideration for the surrender, the "Earl, his heirs and successors, or their agents" agreed to "annually pay… the present or quit rent consisting of one hundred pounds weight of good and merchantable tobacco…" to each First Nation. The Selkirk Treaty was later supplanted by Treaty 1;

b. on October 17, 1818, William Claus, Deputy Superintendent General of Indian Affairs (DSGIA Claus), entered into the Lake Simcoe-Nottawasaga Treaty No. 18 with the "Principal men of the Chippewa Nation of Indians…" for the surrender to the Crown of a tract of land containing approximately 1,592,000 acres in exchange for "the yearly sum of twelve hundred pounds, Province currency, in goods at the Montreal price…" paid annually in full consideration for the surrender;

c. on October 28, 1818, DSGIA Claus entered into the Ajetance Treaty No. 19 with the "Principal men of the Mississague Nation of Indians inhabiting the River Credit, Twelve and Sixteen Mile Creeks, on the north shore of Lake Ontario…" for the surrender to the Crown of a tract of land containing approximately 648,000 acres in exchange for the "yearly sum of five hundred and twenty-two pounds ten shillings Province currency in goods at the Montreal price…" paid annually in full consideration for the surrender; and

d. on November 5, 1818, DSGIA Claus entered into the Rice Lake Treaty No. 20 with the "Principal Men of the Chippewa Nation of Indians…" for the surrender to the Crown of a tract of land containing approximately 1,951,000 acres in exchange for the "yearly sum of the seven hundred and forty pounds Province currency in goods at the Monreal price…" paid annually in full consideration for the surrender.

33. In response to paragraph 20 of the Declaration of Claim, Canada admits the treaties negotiated by the Crown and First Nations in Upper Canada between 1818 and 1836 provided for the payment of annuities in-kind rather than in cash. At this time, Canada does not have knowledge about the nature of the goods or merchandise received by First Nations pursuant to their in-kind annuities between 1818 and 1836, including whether all the goods purchased were essential to the recipient First Nation's survival or to sustaining their livelihood.

34. In response to paragraph 21 of the Claim, Canada admits that in January 1850, William Robinson was appointed as Treaty Commissioner and was tasked with negotiating land cession agreements with the Huron and Superior Anishinaabe for lands north of Lakes Superior and Erie. During the negotiations, Robinson offered the full amount available to him under his mandate: £4000 in cash and a perpetual annuity of £1000 to be divided between the Superior and Huron First Nations. On September 7, 1850, the Robinson-Superior Treaty was executed, and the subject lands were surrendered to the Crown in consideration for "two thousand pounds of good and lawful money of Upper Canada… and for the further perpetual annuity of five hundred pounds…" On September 9, 1850, the Robinson-Huron Treaty was executed, and the subject lands were surrendered to the Crown in consideration for "two thousand pounds of good and lawful money

of Upper Canada… and for the further perpetual annuity of six hundred pounds of like money…" (collectively the "Robinson Treaties").

35. In further response to paragraph 21 of the Declaration of Claim, Canada admits the Robinson Treaties contain augmentation clauses, which provide for an increase of the perpetual Annuity Payments under certain conditions. The augmentation clause in the Robinson-Superior Treaty reads:

> … The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all Her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided, further, that the number of Indians entitled to the benefit of this Treaty shall amount to two-thirds of their present number (which is twelve hundred and forty), to entitle them to claim the full benefit thereof, and should their numbers at any future period not amount to two-thirds of twelve hundred and forty, the annuity shall be diminished in proportion to their actual numbers.

36. In response to paragraph 22 of the Declaration of Claim, Canada admits that the first and only increase to the perpetual annuities paid under the Robinson Treaties was made in 1875. In 1850, the per person annuity was equivalent to about $1.70 under the Robinson-Huron Treaty, and $1.60 under the Robinson-Superior Treaty. In 1875, the per person annuities under both treaties were increased to $4 (£1). Canada further admits the Chiefs of the Superior and Huron First Nations successfully petitioned the government to pay annuity arrears for the period of 1850 to 1874 to recognize that the economic conditions for increasing the annuity had existed before the 1875 increase. The Crown began paying arrears to the beneficiaries of the Robinson Treaties in 1903.

37. In response to paragraph 23 of the Claim, Canada admits that the Numbered Treaties do not contain an augmentation clause equivalent to those in the

Robinson Treaties. Canada denies that the Crown had any necessary or honourable obligation to include a similar provision for the augmentation of treaty annuities in subsequent treaties.

38. In further response to paragraph 23, Canada says the augmentation clauses in the Robinson Treaties are terms that were negotiated because of the unique circumstances existing at the time of those respective treaties. The funds available to Robinson were modest and could not support the standard $10 (£2.10) per person annuity provided under the other contemporaneous treaties negotiated between 1818 to 1850. Robinson had limited access to funds for treaty because the provincial government viewed the economic prospects of the subject lands as bleak, and because Upper Canada was in a financial crisis and could not support a $10 per person annuity. Because of these circumstances, Robinson negotiated a lower annuity along with the promise to increase the annuity if the Crown received revenues from the territory that would permit it to do so without incurring a loss.

39. In response to paragraph 24 of the Declaration of Claim, Canada admits the provision of annuities was an important feature of the Numbered Treaties.

40. In response to paragraph 25 of the Claim, Canada admits that Treaty 1, the Stone Fort (or Lower Fort Garry) Treaty, and Treaty 2, the Manitoba Post Treaty, which collectively secured the surrender of lands in what is now southern Manitoba, were the first treaties negotiated following Confederation on July 1, 1867. Canada further admits that Wemyss M. Simpson, Indian Commissioner, and Adams G. Archibald, Lieutenant-Governor of Manitoba and the North-West Territories, negotiated the terms of the treaties on behalf of the Crown.

41. In response to paragraph 26 of the Claim, Canada says that Joseph Howe, Secretary of State for the Provinces, included a copy of the Robinson-Superior Treaty with his instructions to Commissioner Simpson prior to the negotiations for Treaties 1 and 2. Canada states that a copy of the Robinson-Superior Treaty was provided to the Treaty Commissioners for information only.

42. In further response to paragraph 26 of the Claim, Canada admits Lieutenant-Governor Archibald expressed at the negotiations of Treaty 1 that the Indigenous peoples assembled would be treated with in a similar manner to the Indigenous peoples who had previously entered treaties with the Crown in the East. Canada denies there was any explicit promise made that Canada would enter treaties with the Indigenous peoples at Stone Fort on identical terms and conditions as the Anishinaabe of the Upper Great Lakes region under the Robinson Treaties.

43. In response to paragraph 27 of the Claim, Canada says that Treaty 1 was signed on August 3, 1871, and was ratified by the Governor General in Council on September 12, 1871. Canada admits that, in addition to other promises made, Treaty 1 as recorded in English provides:

> … Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the district above described, distributing them in families, and shall in every year ensuing the date hereof, at some period during the month of July in each year, to be duly notified to the Indians and at or near their respective reserves, pay to each Indian family of five persons the sum of fifteen dollars Canadian currency, or in like proportion for a larger or smaller family, such payment to be made in such articles as the Indians shall require of blankets, clothing, prints (assorted colours), twine or traps, at the current cost price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interests of Her Indian people, in cash.

44. In further response to paragraph 27 of the Claim, Canada says that Treaty 2 was signed on August 21, 1871, and was ratified by the Governor General in Council on November 25, 1871. Canada further says that, in addition to other promises made, Treaty 2 as recorded in English provides:

> … Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period during the month of August in each year to be duly notified to the Indians, and at or near their respective reserves, pay to each Indian family of five persons the sum of fifteen dollars, Canadian currency, or in like proportion for a larger or

> smaller family, such payment to be made in such articles as the Indians shall require of blankets, clothing, prints (assorted colours), twine or traps, at the current cash price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interest of Her Indian people, in cash.

45. In further response to paragraphs 19 and 27 and in response to paragraph 28 of the Declaration of Claim, Canada acknowledges that the reference in Treaties 1 and 2 to the payment of annuities in-kind has similarities to the annuity provisions in the treaties entered into by the British Crown and First Nations in Upper Canada between 1818 and 1836. Canada does not currently have knowledge as to whether from time to time, the Crown paid all or part of the annuities under Treaties 1 or 2 in-kind. Canada admits the purchasing power of the annuities has decreased since the dates of treaty. Canada denies that reference to the payment of annuities in-kind gives rise to an inherent treaty promise to increase the Annuity Payments to maintain purchasing power. The reference to the Montreal cost or cash price in Treaties 1 and 2 and the Upper Canada Treaties is recognition of the fact that there was a wide discrepancy between what the Hudson's Bay Company posts could charge for goods in the isolated post areas and the prices in settled districts such as Montreal or Toronto. The reference was not a means of anticipating and incorporating the future cost of such goods, but rather a mechanism for locking in the historical (contemporaneous) cost at lower, or wholesale, prices.

46. In response to paragraph 29 of the Claim, Canada admits Treaty 3, or the North-West Angle Treaty, was signed on October 3, 1873. Canada admits negotiations between the Crown and signatory First Nations resulted in a per capita annuity of $5, which was higher than the per capita annuity of $3 agreed to in Treaties 1 and 2. Canada acknowledges that the Annuity Payment was an important part of Treaty 3 but does not admit Annuity Payments in and of themselves were seen, or intended as, a means to secure the future livelihood of the collective. Canada states that, as with other treaties, the Annuity Payment was only one of several benefits provided, within treaty and otherwise, in consideration for the surrender of subject lands and to further the reconciliation of the interests of the First Nations with those of the Crown and new settlers.

47. In response to paragraph 30 of the Declaration of Claim, Canada says this paragraph does not contain assertions of material fact to admit or deny.

48. In response to paragraph 31 of the Claim, Canada admits that at the time Treaty 4 was negotiated, Chief Pasqua and his band lived near Leech Lake, in what is now the province of Saskatchewan. Canada currently does not have knowledge of Pasqua First Nation's specific methods of livelihood prior to Pasqua First Nation entering into Treaty 4.

49. In response to paragraph 32 of the Claim, Canada acknowledges that the Rupert's Land Transfer gave rise to questions and grievances by some Indigenous persons and nations inhabiting what had been Rupert's Land and the North-Western Territory. Canada states that on or around April 13, 1871, prior to the negotiation of Treaty 1, a delegation of Plains Cree Chiefs, including Chief Sweet Grass, attended at Edmonton House to meet with William Joseph Christie, then Chief Factor of the Hudson's Bay Company Saskatchewan District, to ascertain whether their lands had been sold and what the intention of the Canadian Government was in relation to them, and to petition for support from the Crown. During this meeting, Commissioner Christie recorded messages from the chiefs, including the quoted message from Chief Sweet Grass in this paragraph, and conveyed the messages to Lieutenant-Governor Archibald in Fort Garry.

50. In response to paragraph 33 of the Declaration of Claim, Canada says the treaty process after Confederation was driven by a desire by Canada to open up the West for settlement and to obtain peace with the Indigenous nations inhabiting the territory. Canada denies that the North-West Council provided Alexander Morris, then Lieutenant-Governor of Manitoba and the North-West Territories, with the mandate to negotiate the terms of Treaty 4 on September 8, 1873. Canada says Lieutenant-Governor Morris did not receive instructions to proceed with making a treaty with First Nations in the Qu'Appelle region until around the spring of 1874.

51. In response to paragraph 34 of the Claim, Canada admits that in September 1874, Canada sent a delegation to Fort Qu'Appelle to conduct negotiations on behalf

of the Crown with First Nations for Treaty 4. Canada admits the delegation was accompanied by militia but does not currently have knowledge as to the number of militia gathered for the treaty negotiations or the effect of their presence among signatory First Nations. Canada denies the characterization of the negotiations as "protracted and fraught with conflict". The Crown engaged with the gathered First Nations with good intentions and encouraged the spokespersons of the assembled First Nations to speak their minds freely during the negotiations. Canada admits that during the negotiation of Treaty 4, Chief Pasqua or "Pisqua" expressed that the moneys paid to the Hudson's Bay Company for the Rupert's Land Transfer should have been paid to First Nations. Canada has no knowledge of how this statement impacted the negotiations.

52. In response to paragraph 35 of the Claim, Canada acknowledges that the Annuity Payment was an important part of Treaty 4. However, Canada does not admit that the Annuity Payments in and of themselves were for the purpose of safeguarding the First Nations signatories' livelihoods, including for future generations. Canada states that the Annuity Payment was only one of several benefits provided, within treaty and otherwise, in consideration for the surrender of subject lands and to further the reconciliation of the interests of the First Nation signatories to Treaty 4 and with those of the Crown and new settlers. The specific phrases quoted by Pasqua First Nation in paragraph 35 are evidence, but Canada admits those words were spoken during the negotiation of Treaty 4.

53. In response to paragraph 36 of the Claim, Canada admits Chief Pasqua entered into Treaty 4 on behalf of his band on September 15, 1874, along with the other signatory First Nations. Canada further admits that Treaty 4 was entered into on behalf of Her Majesty the Queen in right of Canada by Lieutenant-Governor Morris, Minister Laird, and Commissioner Christie. Canada acknowledges the Annuity Payment was an important part of Treaty 4 but does not agree with the Claimant's emphasis on the promise to provide Annuity Payments as a promise to support the future livelihood of signatory First Nations in and of itself. The Governor General in Council ratified Treaty 4 on November 4, 1874.

54. In response to paragraphs 37 and 38 of the Claim, Canada admits that in August and September 1875, Commissioner Christie and M. G. Dickieson of the Department of the Interior attended at Fort Ellice and Qu'Appelle to make the payments of the annuities pursuant to the terms of Treaty 4, and to take adhesions of other First Nations that did not take treaty the previous year. Canada admits that from 1875 to the present, it has made Annuity Payments for Pasqua First Nation's council and members. At this time, Canada does not have knowledge of whether, from time to time, Canada paid all or part of the annuities owing under Treaty 4 to Pasqua First Nation collectively or to its members individually.

55. In response to paragraphs 39 and 40 of the Claim, Canada admits the purchasing power of the Annuity Payments has decreased since the Crown and signatory First Nations executed Treaty 4 on September 15, 1874, but denies that they have been rendered meaningless. Canada admits that Annuity Payments under Treaty 4 have not been augmented, increased, or indexed since the date of Treaty 4 execution.

56. In response to paragraph 55 of the Claim, compensation is not owed to Pasqua First Nation, as Canada upheld any legal obligations it may have had to Pasqua First Nation in the circumstances of the facts giving rise to this Claim. In the event the Tribunal finds compensation is owed, Canada states that any compensation must be assessed in accordance with prevailing legal principles and section 20 of the *SCTA*.

IV. Canada's Statements of Fact

57. Treaty 4, or the Qu'Appelle Treaty, entered into among the signatories on September 15, 1874, represents solemn and sacred promises between Canada and signatory or adherent First Nations, including Pasqua First Nation, and perpetuates nation-to-nation relationships. Canada and the Treaty 4 First Nations' relationships are guided by the terms of Treaty 4, taken as a whole, and the annuity provision should be considered in the context of the entirety of Treaty 4.

58. In September 1874, Canada sent a delegation to Fort Qu'Appelle to conduct treaty negotiations on behalf of the Crown with First Nations. The delegation left Fort

Garry on August 26, 1874, and arrived at Fort Qu'Appelle on September 8, 1874. The Crown's delegation included Lieutenant-Governor Morris, Minister Laird, and Commissioner Christie, a retired Hudson's Bay Company factor. The Crown's delegation was accompanied by two individuals acting as interpreters, Charles Pratt and William Daniel, and by militia. Canada does not currently have knowledge as to the number of militia or persons gathered for the treaty negotiations, but states that the First Nation individuals gathered for those negotiations numbered fewer than 2,000. The Treaty 4 negotiations spanned the course of several days, from September 8 to 15, 1874.

59. Pasqua First Nation, as represented by Chief Pasqua, was an original signatory to Treaty 4 at Fort Qu'Appelle.

60. Treaty 4 was negotiated in good faith. At the negotiations, First Nations sought reassurance from the Crown that it was engaging with good intentions. Lieutenant-Governor Morris assured the First Nations that the Crown's intentions and promises were sincere; the Crown was concerned for the wellbeing of First Nation peoples in perpetuity; and the agreement was made in contemplation of the good of the First Nations' children. Lieutenant-Governor Morris also encouraged the spokespersons of the gathered First Nations to speak their minds freely during the negotiations. The text of Treaty 4 expresses its aim to foster "peace and good will" between the Crown and First Nations.

61. The terms of Treaty 4, as recorded in English, state the First Nation signatories to the Treaty "do hereby cede, release, surrender, and yield up to the Government of the Dominion of Canada... forever, all their rights, titles and privileges whatsoever to the lands" covered by Treaty 4, though the interpretation of this provision is not at issue in this proceeding. Treaty 4 territory spans approximately 75,000 square miles located in what is now most of southern Saskatchewan as well as portions of western Manitoba and south-eastern Alberta.

62. Treaty 4 contains several promises to signatory First Nations to obtain their consent to open up the area covered by Treaty 4 to settlement, immigration, and trade. These promises included the provision of annuities, in perpetuity, of five

dollars ($5) per person per year for each member of a signatory First Nation. The signatories to Treaty 4 intended the Annuity Payments to be confined to the specific amounts in the text of Treaty 4.

63. The Annuity Payment was an important term bargained for in Treaty 4. However, the Annuity Payment was only one of several benefits provided, within the Treaty and otherwise, in consideration for the surrender of the subject lands and to further the reconciliation of the interests of the signatory First Nations with those of the Crown and new settlers.

64. In addition to the Annuity Payments, Treaty 4 provides, among other things, that the Crown will set apart land as reserves; distribute up to seven hundred and fifty dollars ($750) each year in powder, shot, ball and twine; provide a school on reserve; provide various tools and supplies; and provide several one-time monetary payments and goods. Treaty 4 gave beneficiaries (other than the Chief and Headmen, who received twenty-five dollars ($25) and fifteen dollars ($15) respectively) an initial payment or present of twelve dollars ($12).

65. Measures taken by Canada outside of Treaty 4, pursuant to social policy, include the funding of a wide range of programs and services available to Treaty 4 First Nations and their members, including Pasqua First Nation. These programs and services include, but are not limited to, initiatives in the areas of housing and infrastructure, education, health care, social assistance, child and family services, economic development, employment assistance, transportation, democratic participation, higher education, dental care, cultural development, cultural and linguistic preservation, and governance and salaries.

66. The parties to Treaty 4 intended Annuity Payments to be confined to the specific amounts agreed upon and set out in the text of the Treaty. Canada is not required to increase the Annuity Payment under Treaty 4 and has met, and continues to meet, its Annuity Payment obligations to Pasqua First Nation under Treaty 4.

V. Relief

67. Canada seeks the following relief:

a) dismissal of the Claim;
b) reservation of right to seek costs upon the final determination of the proceedings; and
c) such further relief as this Honourable Tribunal deems just.

VI. Communication

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

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: Gabriela Fuentealba and Evan Morrow

69. Facsimile number for service is (306) 975-4030.

70. Email address for service is: Gabriela.Fuentealba@justice.gc.ca

Dated this 25th day of August 2025.

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Counsel for the Respondent

Court File Nos. CV-24-00000091-00CP

WABASEEMOONG INDEPENDENT NATIONS et al	-and-	HIS MAJESTY THE KING
Plaintiff		Defendants

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