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To: Members of the Touchwood Agency Tribal Council:
Day Star First Nation
Fishing Lake First Nation
George Gordon First Nation
Kawacatoose First Nation
Muskowekwan First Nation

From: Maurice Law

File: Touchwood Agency Tribal Council- Misadministration Claim 412.01

Date: December 10, 2019

Subject: **Status Update of Misadministration Claim**

BRIEFING NOTE

This briefing note provides details respecting a background of the Touchwood Agency Misadministration Claim, a summary of the Claim and its key allegations, and the procedural history and current status of the Claim.

This Claim is being advanced by the Day Starr First Nation, Fishing Lake First Nation, George Gordon First Nation, Kawacatoose First Nation, and the Muskowekwan First Nation (each a “Band” or “First Nation”, collectively the “Bands” or “First Nations”).

BACKGROUND OF THE TOUCHWOOD AGENCY MISADMINISTRATION CLAIM

In the early 1920s, the Touchwood Agency accumulated a significant amount of debt, largely as a result of the mismanagement of the Band’ accounts by Indian Agent John B. Hardinge. When Hardinge was hired, the total debt of the Agency was approximately \$15,000. By 1923, the year of his dismissal, Hardinge accumulated at least \$60,000 of debt. Hardinge generally mismanaged the Agency, misappropriated, stole, and diverted funds, and accumulated significant debt with local merchants.

Although the Department reimbursed some of the debt that Hardinge had accumulated, it refused to honour any of Hardinge's other debts or to reimburse the money that he had stolen, misappropriated or otherwise diverted from the Band's accounts. The Department refused to recognize claims that were not supported by written documentation and executed by Hardinge.

Most of the debt that remained was viewed by the Department as belonging to the individual Band members. In order to satisfy the outstanding debts that Hardinge had fraudulently accumulated, the Department directed the Bands to secure loans from their own capital and revenue accounts, which would be repaid by the individual Band members through the sale of their grain or produce

The former Poorman Band (now, Kawacatoose) obtained a \$13,601.45 loan from its capital account, sanctioned by an Order in Council dated May 9, 1922, to be repaid in five years, with 5% interest. The Fishing Lake Band obtained a \$2,835.29 loan from its interest account. The members of the Day Star, Muscowequan (now, Muskowekwan) and George Gordon Bands had insufficient funds in their trust accounts to pay their debts. Consequently, a loan to pay the debts of the three bands was arranged from the Fishing Lake interest account, to be repaid by collection from Band members at 6% interest. This amount totalled \$20,624.65. On May 3, 1922, Chief Sabotawasis of the Fishing Lake Band signed a BCR authorizing \$20,624.65 to be removed from the Fishing Lake interest account. No other name appears on this BCR. The money was distributed by Hardinge to the indebted local merchants.

On March 1, 1923, another BCR was signed by Fishing Lake Band to loan an additional \$5,000 from its interest account to the Muscowequan (now, Muskowekwan) and Gordon Bands. This loan was to be repaid by Band members within five years with a 6% interest rate. Again, no mark other than that of Chief Sabotawasis appears on the document.

Further indebtedness of approximately \$30,000 was discovered in September of 1923. On October 4, 1923, Hardinge tendered his resignation. Over the course of the next year, a series of investigations, reviews, and reports were undertaken by the Department into the fraud and mismanagement of the Touchwood Agency over Hardinge's tenure.

From October 21, 1924 to October 24, 1924, the Department secured additional BCRs from the Bands in order to facilitate the payment of the recently discovered debt. \$1,637.15 was secured from the capital account of the Day Star Band; \$9,000.00 from the capital account of the Poorman Band; \$3,489.00 from the capital account of the Muscowequan Band; and \$9,000.00 from the capital account of the Fishing Lake Band.

The particulars of all losses will be accounted for by the forensic accountant and further proven at trial if necessary.

THE SPECIFIC CLAIMS PROCESS

This Claim was submitted to the Specific Claims Branch of the Department of Indian Affairs and Northern Development in March 1993 by the Day Star, Fishing Lake, George Gordon,

Kawacatoose, and Muskowekwan First Nations who had reconstituted themselves as the Touchwood Agency Tribal Council.

On March 5, 1998, John Sinclair, Assistant Deputy Minister, Claims and Indian Government, “conditionally” accepted the Claim for negotiation on the grounds that further research be undertaken to identify the compensation owing and to clarify the nature and extent of the losses suffered by the Claimant First Nations. In September 2000, after the forensic audit was completed, the Indian Claims Commission was asked to participate and facilitate the negotiations.

Ultimately the Parties were not able to reach an agreement on a compensation amount. On March 20, 2002, Canada advised that the negotiations were concluded without a satisfactory resolution. On October 16, 2008, Canada, once again, offered to negotiate this Claim under the new Specific Claims Process. On October 17, 2008, the Minister notified the First Nations that the Claim is “closed”.

On November 1, 2019 Maurice Law filed a Declaration of Claim with the Specific Claims Tribunal. Canada must now file a Response to the Declaration of Claim by January 31, 2020. The Declaration of Claim filed by Maurice Law alleges that the Crown breached the statutory scheme governing the management of Indian moneys; that the Crown breached its fiduciary obligations regarding the management of capital and revenue accounts; and that the mismanagement of the Touchwood Agency was a Breach of the Crown’s fiduciary obligations.

Historical and documentary evidence relied upon for specific claims are generated primarily from Crown sources and generally do not reflect First Nations’ perspectives, which are often recounted orally. Elder testimony and oral history contribute to an understanding of the history from the First Nations’ perspectives.

Work will need to commence immediately in order to identify the Elders and knowledge keepers who will be able to provide Elder testimony at an Oral History Hearing before the Specific Claims Tribunal, where the Crown will have an opportunity to cross examine the Elder regarding their oral history evidence. A Hearing such as this allows for the preservation of Elder’s evidence, which may not be available later in the process.

NEXT STEPS

Maurice Law will meet with Elders prior to the hearing being scheduled and will circulate a set of draft oral history questions to each First Nation to provide to Elders so they may consider such questions and for the purposes of assisting in providing their input to this claim.

We have also engaged the services of expert forensic accountants at MDD who have undertaken to digitize all historic ledger data to determine with near 100% accuracy the extent of monies mismanaged by the Touchwood Agency. An expert evidence hearing may be scheduled, where parties will have an opportunity to cross examine the experts and the evidence submitted in their expert reports.

Maurice Law will draft and circulate oral history questions and will schedule information meeting(s) with the First Nations in early 2020 to discuss the Claim, the collection of oral history evidence, and the use of previously collected oral history evidence.