Original Response filed April 8, 2016 **SCT File No.: SCT-7003-15**

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

WILLIAMS LAKE INDIAN BAND

CLAIMANT

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indigenous Affairs and Northern Development Canada

RESPONDENT

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

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

TO: WILLIAMS LAKE INDIAN BAND
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I. Status of Claim (R. 42(a))

1. On April 27, 2012, the Williams Lake Indian Band (the "Band") submitted its claim to the Minister of Indian Affairs and Northern Development Canada (the "Minister"), alleging that Her Majesty the Queen in Right of Canada (the "Crown") had breached lawful obligations to the Band.

2. On June 4, 2015, the Minister notified the Band in writing that its specific claim had not been accepted for negotiation.

II. (a) Validity (Rule 42(b) and (c))

3. The Crown does not accept the validity of any of the claims set out in the Amended Declaration of Claim, and in particular, that in relation to the taking for railway purposes of a 4.37 acre parcel of land in Williams Lake I.R. No. 1 (the Right of Way):

a. the Crown breached a legal obligation under the *Indian Act* or any other legislation pertaining to Indians or lands reserved for Indians;

b. the Crown breached a legal obligation arising from the Crown's provision or non-provision of reserve lands or its administration or reserve lands, Indian moneys or other assets of the Band;

c. the Crown gave an illegal lease or disposition of reserve lands; or

d. the Crown failed to provide adequate compensation for reserve lands taken by the Crown or any of its agencies under legal authority.

4. The Crown does not accept the validity of the claim that the Band has suffered any damages. The Band has already been compensated in full for the fair market value of the Right of Way.

III. Allegations of Fact – Amended Declaration of Claim (Rule 41(e)): Acceptance, denial, or no knowledge (Rule 42(d))

5. The Crown admits the facts alleged in the following paragraphs of the Amended Declaration of Claim: ~~8 – 15, 21, 25, 26, 29 – 32, 37 – 39~~ 8 –16, 22, 26, 27, 30-32, 34, 39 – 41.

6. The Crown denies the facts alleged in the following paragraphs of the Amended Declaration of Claim: ~~28~~ 29.

7. The Crown has no knowledge of the facts alleged in the following paragraphs of the Amended Declaration of Claim: 7, ~~27~~ 28.

8. The statement at paragraphs ~~22~~ 23 and 33 in the Amended Declaration of Claim requires a conclusion of law and is not admitted.

9. In response to paragraph ~~17~~ 18, the Crown admits that on September 16, 1914, PGER wrote the Department of Indian Affairs ("DIA") requesting permission to build on the right of way "pending the valuation of this right of way".

10. In response to paragraph ~~18~~ 19, the Crown admits that on September 29, 1914, PGER undertook to pay such sum for the right of way that the DIA deemed fair.

11. In response to paragraph ~~19~~ 20, the Crown admits that on September 29, 1914, the DIA acknowledged receipt of PGER's September 16, 1914 letter and stated that this application would receive immediate attention.

12. In response to paragraph ~~20~~ 21, the Crown admits that on September 29, 1914, the DIA requested that the Royal Commission on Indian Affairs for British Columbia (the "Royal Commission" or "Commission") to take action with respect to PGER's application at as early a date as possible and requested that realtor W.S. Vaughan prepare a valuation of the right of way. The Crown further admits that on September 30, 1914, in response to PGER's undertaking, the DIA permitted PGER to begin construction.

13. The Crown admits the facts alleged at paragraph ~~23~~ 24, but states that the DIA, rather than the Royal Commission, informed PGER of the Royal Commission's recommendation to accept PGER's application.

14. The Crown admits the facts alleged at paragraph ~~24~~ 25, but states that Mr. Vaughan valued 0.37 acres of the right of way at $5.00 per acre and 4.25 acres of the right of way at $10.00 per acre, amounting to the total of $44.35 for the combined 4.62 acres.

15. In response to paragraph ~~33~~ 35, the Crown admits that the DIA asked the Royal Commission to consider an addition to reserve.

16. In response to paragraphs ~~34~~ 36 and ~~35~~ 37, the Crown admits that in August 1915 the Royal Commission suggested that PGER or the DIA purchase "lieu lands" for the Band and that subsequently, the DIA requested that the Indian Agent look into the situation, while noting that the $44.35 received "appears to be a very small sum to be invested in land". In 1916, the Indian Agent submitted an additional land application to the Royal Commission on behalf of the Band; however, the Royal Commission denied the additional land application.

17. In response to paragraph ~~36~~ 38, the Crown admits that the DIA stated that the sum paid for the right of way was insufficient for a *per capita* distribution but suggested that the Indian Agent should use the money to purchase seed and farm implements for the Band.

IV. Statements of Fact (Rule 42(e))

18. In addition to the foregoing, the Crown sets out the following facts that are related to the specific claim.

The Allotment of Williams Lake I.R. No. 1

19. Following British Columbia's entry into Confederation, a joint Indian reserve commission was established to allot Indian reserves in British Columbia. Most of the allotments were located on provincial Crown land and were only provisionally reserved until British Columbia transferred administration and control of the lands to the Crown in 1938.

20. In June 1881, Commissioner O'Reilly travelled to Williams Lake and met with Chief William and other members of the Williams Lake Indian Band. A draft memorandum dated June 6, 1881 contains notes of a conversation between Commission O'Reilly and Chief William:

> Commissioner - …in the early days mistakes were made with the land, the Indians were engaged otherwise and did not care for the land, the consequence was the whites pre-empted it, that the Govt. wish to remedy the mistake as far as possible and has purchased a large and valuable tract of land which I am about to hand over to them…if the land purchased by the Govt. shall prove insufficient other land will be given to them and also a sufficient quantity of water.

21. The "large and valuable tract of land" purchased by the Crown for the Band was the Bates estate, comprised of 1,464 acres at the head of Williams Lake. The Bates estate, along with approximately 2,636 acres of adjoining provincial Crown lands, subsequently became Williams Lake Reserve No. 1 ("IR 1"). The Bates estate lands to the north of the San Jose River are described as including ploughed feeds and arable land, whereas the lands to the south of the San Jose River are described as grassy swamp at the base of the mountain.

22. IR 1 was confirmed as an Indian Reserve within the meaning of the *Indian Act* on July 29, 1938. Pursuant to British Columbia Order in Council 1036, dated July 29, 1938, British Columbia transferred administration and control of the provisionally approved reserve lands to the Crown.

The McKenna-McBride Commission

23. On September 24, 1912, the Crown and British Columbia signed an agreement referred to as the McKenna-McBride Agreement (the "Agreement"). The Agreement established the Royal Commission, "to settle all differences between the Governments of the Dominion and the Province respecting Indian Lands and Indian Affairs generally in the Province of British Columbia". The Royal Commission's powers included the ability to set aside additional reserve lands for Indian Bands.

24. Section 8 of the Agreement dealt with railways, providing:

> If during the period prior to the Commissioners making their final report it shall be ascertained by either Government that any lands being part of an Indian reserve are required for right-of-way or other purposes, or for any Dominion or Provincial or Municipal public work or purposes, the matter shall be referred to the Commissioners who shall thereupon dispose of the question by an interim report, and each Government shall thereupon do everything necessary to carry the recommendations of the Commissioners into effect.

Approval and Valuation of the Right of Way Land

25. On August 17, 1914, PGER wrote to the British Columbia Minister of Railways to request certification of tracings and blueprints for a right of way across IR 1. This was required by the Royal Commission to enable PGER to obtain interim permission to proceed with construction through the reserve.

26. On September 10, 1914, the Minister of Railways certified PGER's plan for a 4.62 acre right of way through IR 1. The right of way is located in the southwestern corner of IR 1 near the base of a mountain, through lands south of the Williams Lake and the San Jose River labelled "grassy swamp".

27. On September 16, 1914, PGER wrote the DIA requesting a 4.62 acre right of way through IR 1. PGER requested that, pending valuation of the right of way, the DIA allow construction to begin immediately.

28. Also on September 14, 1914, PGER wrote to the Royal Commission, requesting that the Commission approve the certified plans for the right of way.

29. On September 29, 1914, PGER contacted the DIA, stating that construction had reached IR 1, but PGER was awaiting the Royal Commission's approval. On the same day, the DIA acknowledged PGER's request for a right of way through IR 1 and requested that the Royal Commission take action as soon as possible.

30. Also on September 29, 1914, the DIA asked Quesnel-based realtor W.S. Vaughan to prepare a valuation of the right of way, adding that he should:

> Please note that in all cases the Indian Council and the Indians specially interested are to be consulted and you should endeavour to obtain their concurrence with the values ....

31. Also on September 29, 2014, PGER undertook to pay whatever valuation the DIA deemed fair and requested to begin construction on the right of way.

32. On September 30, 1914, in response to PGER's undertaking, the DIA allowed PGER to begin construction on the right of way.

33. On October 5, 1914, the Royal Commission provided the DIA with a copy of Interim Report No. 51, whereby the Commission recommended that "subject to compliance with the requirements of the law and to due compensation being made" permission be granted to the PGER to enter and acquire the right of way.

34. On October 12, 1914, Mr. Vaughan wrote to the DIA confirming his instructions, stating: "...you wish us to ... endeavour to obtain the concurrence of the Indians interested with the valuations."

35. On October 27, 1914, Mr. Vaughan completed his valuation for the right of way. The total value for the Right of Way was $44.35, with 0.37 acres being valued at $5.00 per acre and 4.25 acres being valued at $10.00 per acre. The Band agreed with Mr. Vaughan's valuations.

36. On November 9, 1914, the DIA agreed that Mr. Vaughan's valuation of the right of way was reasonable, given that the proposed railway line ran along the foot of a side hill, and requested that PGER pay the assessed $44.35.

37. On November 25, 1914, PGER paid $44.35 for the right of way. On March 18, 1915, the DIA returned $0.65 to the PGER as the lands taken for the right of way were altered to remove the 0.37 acres valued at $5.00 and to increase to 4.37 acres the lands valued at $10.00 per acre.

~~38. Ultimately, the Right of Way measuring 4.37 acres was taken in the southwestern corner of IR 1. That Right of Way continues to be used for rail purposes today.~~

38. On August 28, 1915, PGER applied for a Provincial crown grant for the 4.37 acre Right of Way.

39. On September 20, 1915, Canada issued letters patent the PGER for the Right of Way.

40. On June 1, 1916, British Columbia issued a Provincial crown grant to PGER for the 4.37 acre Right of Way. This grant stated that British Columbia transferred "all Our interest, reversionary or otherwise in said lands" to PGER.

Valuation of IR 1 as a Whole

41. On November 29, 1914, the Royal Commission contacted Indian Agent Ogden, requesting that he provide valuations for several Indian reserves, including IR 1. This valuation was of IR 1 *as a whole* and included the fertile farmlands from the Bates estate.

42. On February 5, 1915, the Royal Commission contacted Indian Agent Ogden again, requesting the reserve valuations, noting that they were required to complete the Commission's work.

43. On May 8, 1915, Indian Agent Ogden wrote the Royal Commission setting out total valuations for various reserves, noting the total value for IR 1 as $47,250. For the 4,074 acre reserve, this would work out to approximately $11.60 per acre.

44. On May 13, 1915, the Royal Commission acknowledged Indian Agent Ogden's letter, but stated that the information was "insufficient and unsatisfactory" and that they required "a fair and just valuation of each particular reserve allotted for each of the several tribes or bands of the Williams Lake Agency."

45. On July 27, 1915, the Royal Commission wrote to Indian Agent Ogden requesting a separate and individual valuation for each of the Indian reserves for the Williams Lake Agency.

46. On August 2, 1915, Indian Agent Ogden wrote to the Royal Commission enclosing the requested valuations. He recorded the value for the whole of IR 1 as $25.00 per acre, amounting

to a total value of $101,850 for the entire 4, 074 acre reserve. He did not provide a breakdown of the valuation assigned to the different lands included in the IR 1.

Request for Additional Lands

47. On October 27, 1914, when Mr. Vaughan wrote to the DIA setting out his valuation for the right of way, he noted that instead of money, the Band requested that additional vacant provincial Crown lands be added to the northern boundary of IR 1, equivalent to the lands taken for the right of way.

48. On February 18, 1915, the DIA referred this request to the Royal Commission, noting that it was equivalent to a request for an addition to reserve. The Royal Commission stated that this request would obtain due attention when it addressed additional land applications for the Williams Lake Agency.

49. On August 13, 1915, the Royal Commission referred the Band's request for additional lands back to the DIA, suggesting that the Department attempt to purchase additional lands with the funds paid for the Right of Way.

50. On August 21, 1915, the DIA asked Indian Agent Ogden to look into the possibility of purchasing additional lands adjacent to IR 1.

51. In April, 1916, Indian Agent Ogden recommended distributing the money received for the Right of Way to the Band as a possible alternative. The DIA determined that the amount was too small for a per capita distribution and instead recommended using the money for seed and farm implements for the Band.

52. In June 1916, the Royal Commission denied the Band's request for additional lands.

V. Relief (Rule 42(f))

53. The Crown seeks to have the claim dismissed in its entirety.

54. If the Crown is liable, which is not admitted, the Crown asserts that the Province of British Columbia caused or contributed to the acts or omissions and any losses arising therefrom as set out in subparagraph 20(1)(i) of the *Specific Claims Tribunal Act*.

55. If the Crown is liable, which is not admitted, the Crown seeks to have the Band's claim for damages dismissed on the basis that the Band was already compensated in full for the lands at issue.

56. The Crown pleads and relies upon section 20 of the *Specific Claims Act*.

57. The Crown seeks its costs in the proceedings.

58. Such further relief as this Honourable Tribunal deems just.

VI. Communication (Rule 42(g))

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Dated: November 30, 2016

Signature of
☐ Respondent ☒ lawyer for Respondent
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Per: Nicholas Claridge
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