

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**PASQUA FIRST NATION**

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	December 12, 2016	D E P O S É
Amy Clark		
Ottawa, ON	4	

Claimant

v.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Indian Affairs and Northern Development

Respondent

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**RESPONSE**

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

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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  
as represented by  
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1. This is the Crown's response to the Declaration of Claim ("Claim") filed by the Pasqua First Nation with the Specific Claims Tribunal ("Tribunal") on October 12, 2016 pursuant to the *Specific Claims Tribunal Act* ("SCTA").
2. The Claim relates to alleged breaches of legal obligations that arose from the taking of land from Pasqua IR 79 for
  - a. a railway right-of-way in 1910;
  - b. a road allowance in 1911; and
  - c. a road diversion in 1920.

**I. Status of Claim (R. 42(a))**

3. The requirements in section 16 of the SCTA are satisfied in that:
  - the Pasqua First Nation originally submitted a claim for assessment under the *Specific Claims Policy* on January 18, 2013;
  - the specific claim of the Pasqua First Nation was filed with the Minister of Indigenous and Northern Affairs Canada (the "Minister") within the meaning of the *SCTA* on April 10, 2013; and
  - on May 20, 2016, the Minister notified the Pasqua First Nation in writing of her decision to not negotiate the specific claim.

**II. Validity (R. 42(b) and (c))**

4. The Attorney General must respond to this claim according to the rules of practice applicable to pleadings in a matter of this nature and consistent with her duties and functions in the conduct of litigation for or against the Crown in right of Canada. Canada will pursue reconciliation and is committed to a renewed nation-to-nation relationship with Indigenous Peoples based on recognition of rights, respect, cooperation and partnership. The Attorney General and the Government of Canada seek to work in other contexts beyond pleadings to achieve the fulfilment of those commitments.

5. The Crown does not accept and specifically denies the validity of all of the allegations in the Claim. Without limiting the generality of the foregoing, the Crown denies that it:
  - a. failed to follow the expropriation procedures set out by the *Indian Act* and the *Railway Act* when it expropriated Pasqua First Nation reserve land for the railway right-of-way;
  - b. failed to advise the Pasqua First Nation regarding the valuation of the land to be taken and its statutory right to seek arbitration if it was not satisfied with the compensation for the lands taken;
  - c. failed to ensure that the Pasqua First Nation's use and enjoyment of its reserve land was minimally impaired by purporting to grant fee simple title to the road and right-of-way lands to the Grand Trunk Pacific Railway ("GTP") when it required only a limited interest in the nature of the statutory easement with a reversionary right in favour of the Pasqua First Nation when the lands were no longer required for railway and road purposes;
  - d. failed to withhold its consent to the taking of Pasqua First Nation reserve land as the transaction was foolish, improvident and exploitative; and
  - e. failed to obtain adequate compensation for any taking of Pasqua First Nation reserve land.

**III. Allegations of Fact – Declaration of Claim (R. 41(e)): Admit, deny or no knowledge (R. 42(d))**

6. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Claim and puts the Pasqua First Nation to the strict proof thereof. Further, and without limiting the generality of the foregoing, the Crown specifically denies the facts in the following paragraphs of the claim: 5, 22, 24, 29 and 31.
7. The Crown admits the facts set out in the following paragraphs of the claim: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 23, 25, 26, 28 and in part 13, 15, and 27.

8. The Crown has no knowledge of the facts in the following paragraph of the claim: 30.
9. In response to paragraph 13 of the claim the Crown says that, in addition to instructing the Indian Agent to allow the GTP to enter the reserve and begin construction, the Department of Indian Affairs (“DIA”) requested that the Indian Agent consult with the Pasqua First Nation and obtain their agreement on the valuation as it was the policy of the DIA, though not a requirement, to always consult with the Indians.
10. In response to paragraph 15 of the claim, the Crown denies that the Indian Agent’s valuation of \$647.70 was prepared without consultation with the Pasqua First Nation.
11. In response to paragraph 27 of the claim, the Crown denies that the \$31.60 was not deposited in the Pasqua First Nation’s trust account.

**IV. Statements of Fact (R. 42(a))**

Relevant Expropriation Legislation

12. Section 46 of the 1906 *Indian Act* R.S.C. 1906, c. 81 states:

46. No portion of any reserve shall be taken for the purposes of any railway, road or public work without the consent of the Governor in Council, and, if any railway, road, or public work passes through or causes injury to any reserve, or, if any act occasioning damage to any reserve is done under authority of an Act of Parliament or of the legislature of any province, compensation shall be made therefor to the Indians of the band in the same manner as is provided with respect to the lands or rights of other persons.

13. Sections 172 and 175 of the *Railway Act* R.S.C. 1906, c. 37 (“*Railway Act, 1906*”) states:

172. No company shall take possession of, use or occupy any lands vested in the Crown, without the consent of the Governor in Council.

2. Any company may, with such consent, upon such terms as the Governor in Council prescribes, take and appropriate, for the use of its railway and works, so much of the lands of the Crown lying on the route of the railway as have not been granted or sold, and as is necessary for such railway, and also so much of the public beach, or bed of any lake, river or stream, or of the land so vested covered with the waters of any such lake, river or stream as is necessary for making and completing and using its said railway and works.

3. The company may not alienate any such lands so taken, used or occupied.

4. Whenever any such lands are vested in the Crown for any special purpose, or subject to any trust, the compensation money which the company pays therefor shall be held or applied by the Governor in Council for the like purpose or trust.

...

175. No company shall take possession of or occupy any portion of any Indian reserve or lands, without the consent of the Governor in Council.

2. When, with such consent, any portion of any such reserve or lands is taken possession of, used or occupied by any company, or when the same is injuriously affected by the construction of any railway, compensation shall be made therefor as in the case of lands taken without the consent of the owner.

14. The sections 189 and 192 of the *Railway Act, 1919* 9-10 George V, c. 68 (*Railway Act, 1919*) are the successor provisions to sections 172 and 175 of the *Railway Act, 1906*.

15. Section 28 of *The Highways Act, R.S.S. 1920, c. 21* (“*The Highways Act*”) states:

28(1) The minister may from time to time cause to be surveyed and marked out on the ground by a duly qualified surveyor, any old trail which existed as such prior to the subdivision of the land which it crosses into sections, or any land required for a public highway; and one copy of the plans of such surveys approved by the minister shall be filed with the department and a second copy shall be forwarded to the land titles office for the land registration district within which such old trail or public highway is situated.

(2) The effect of the forwarding and receipt in a land titles office of such copy of plans of survey, whether before or after the coming into force of this Act, shall be to vest the lands shown on such plans in His Majesty for the public use of the province, without prejudice however to the legal rights of the owner to compensation therefor:

Provided that the right and title to all mines and minerals which may be found under such land shall continue to be vested in the owner and his assigns.

16. Section 30 of *The Highways Act* states:

30. The minister may, by surveyors, engineers, foremen, agents, workmen and servants:

(a) enter upon and take possession of any lands, in whomsoever vested, required for a public improvement;

...

(c) enter upon and take possession of any land the expropriation of which the minister deems necessary for the use, construction, maintenance or repair of any public improvement or for obtaining better access thereto;

GTP and GTPBL's Statutory Authority to Expropriate

17. The *National Transcontinental Railway Act* S.C. 1903, 3 Edw. VII, c.71 (“*NTRA*”) was passed in 1903. The *NTRA* provided for the construction of a transcontinental railway, comprised of an Eastern and a Western Division.
18. In 1903, the GTP was established pursuant to *An Act to incorporate the Grand Trunk Pacific Railway Company* S.C. 1903, 3 Edw. VII, c. 122 (“*GTP Act*”).
19. By the *NTRA* and the *GTP Act* the government of Canada and the GTP agreed to jointly construct a transcontinental railway line from New Brunswick to British Columbia. The Canadian government would construct the Eastern Division of the transcontinental railway from Moncton to Winnipeg and the GTP would construct the Western Division (consisting of “prairie” and “mountain” sections) from Winnipeg to the Pacific Coast. Once complete, the entire rail line would be operated by the GTP.
20. Section 30 of the *GTP Act* provided that the GTP would have “all the powers necessary to take over, assume and carry into effect” the Agreement between the GTP and the government annexed as a Schedule to the *NTRA*. Section 38 of the *NTRA* also provided that the *Railway Act, 1906* would apply to the GTP.
21. The Grand Trunk Pacific Branch Lines Company (“GTPBL”) was incorporated in 1906 as a subsidiary of the GTP to construct branch lines on the Western Division of the Grand Trunk Pacific Railway. *An Act to incorporate the Grand Trunk Pacific Branch Lines Company* S.C. 1906, 6 Edw. VII c. 99, (assented to July 13, 1906) (“*GTPBL Act*”) granted the GTPBL the statutory authority to construct and operate the branch lines, including the line in the Claim.

Expropriation of 26.56 acre railway right of way 1910

22. On March 19, 1910, the GTP informed the DIA that its Melville-Regina branch line would pass through Pasqua IR 79 and that it required 23.66 acres from the reserve for the right of way. The GTP also requested the price the DIA was prepared to accept for the land.
23. On March 30, 1910, the DIA responded to the GTP and indicated that it would not be possible to determine the compensation payable until a survey plan was filed showing the exact location of the proposed right of way.
24. On May 13, 1910 the GTPBL applied to the Board of Railway Commissioners for Canada under section 159 of the *Railway Act, 1906*, for an order approving the location of a section of its Melville-Regina branch.
25. On June 29, 1910, GTP submitted an application to the DIA on behalf of the GTPBL for a right of way through Pasqua IR 79 for the Melville-Regina branch line. The GTP also forwarded a plan of survey that indicated an area of 26.56 acres was required for the right-of-way.
26. In July 1910, the plan of survey was certified by the Department of Railways and Canals and registered in the DIA Surveys Branch as Plan No. 994.
27. The Board of Railway Commissioners for Canada issued an order approving the application of GTPBL on July 5, 1910.
28. The expropriation of the railway right-of-way on Pasqua IR 79 was for railway purposes.
29. On July 19, 1910, the DIA requested that the Indian Agent provide it with a valuation of the land for the right-of-way through Pasqua IR 79, including any damages to the reserve and any improvements made by individual band members.
30. On August 27, 1910, the GTP requested that the DIA allow it access to Pasqua IR 79 to commence construction of the right-of-way.
31. On August 29, 1910 the DIA instructed the Indian Agent to permit the GTP to enter onto Pasqua IR 79 for construction. The Deputy Minister also requested the Indian Agent consult

with the Pasqua First Nation and obtain their agreement on the valuation as it was the policy of the DIA, though not a requirement, to always consult with the First Nations.

32. On August 30, 1910, the DIA made a formal submission to the Governor in Council recommending approval of the GTP's application for the right of way through several reserves, including Pasqua IR 79.
33. On September 8, 1910, the DIA informed the GTP that the Indian Agent had been instructed to allow the Company to enter Pasqua IR 79 to begin construction. At that time the DIA also forwarded the Indian Agent's valuation of \$647.70 to the GTP and requested the GTP to pay this amount.
34. On September 16, 1910, Order in Council P.C. 1740 approved the GTPBL's right-of-way for railway purposes consisting of 26.56 acres on Pasqua IR 79 pursuant to section 46 of the *Indian Act*.
35. On November 26, 1910 the solicitor for the GTP forwarded a cheque in the amount of \$647.70 to the DIA and a receipt was issued on November 26, 1910. This amount was credited to the trust account of the Pasqua First Nation on November 30, 1910, and \$116.50 was withdrawn on December 24, 1910, for payment to the band member whose improvements were damages.

#### 1911 Road Allowance

36. In January 1911, the DIA informed the GTP there was no road allowance along the East boundary of Pasqua IR 79 and requested that the right-of-way plan be corrected to include an additional 0.8 acre area. The DIA requested that the GTP pay the amount of \$16.00 as compensation.
37. In November 1911, the GTP paid the \$16.00 for the additional 0.8 acre and that amount was deposited in the Pasqua First Nation's capital account.
38. The additional 0.8 acre, however, was not taken from Pasqua IR 79, but from adjacent provincial lands.

39. The Pasqua First Nation was therefore compensated for lands which were not reserve lands and which were not part of Pasqua IR 79.

1920 Road Diversion

40. On July 23, 1915, the GTP informed the DIA that it required an additional 1.6 acres of Pasqua IR 79 for a road diversion in connection with the right of way.
41. On August 4, 1915 the DIA informed the Indian Agent about the GTP's request and asked him to provide a valuation for the additional 1.6 acres. The Indian Agent was also instructed to consult with the band to "ascertain their views and concurrence with the valuation."
42. On September 16, 1915, the Indian Agent submitted a report valuing the land at \$20 per acre, in keeping with the prior amount paid per acre.
43. On September 22, 1915, the DIA informed the GTP that a valuation of \$20 per acre had been placed on the 1.6 acres required for the road diversion.
44. The Province of Saskatchewan also required a road diversion, of which 1.58 acres were located on Pasqua IR 79. CLRS Plan No. RD 1874SK was certified by the surveyor on April 14, 1919. The plan was approved by the Department of Highways for the Province of Saskatchewan in 1920 and approved by the Board of Railway Commissioners by Order Number 17508.
45. On March 29, 1920, the DIA informed the Department of Highways of the Province of Saskatchewan that an area of 1.6 acres of Pasqua IR 79 was required by the GTP, and when payment for the land was received steps would be taken to obtain an OIC transferring the road to the Province of Saskatchewan.
46. The Department of Highways for the Province of Saskatchewan responded and stated that approximately 0.2 acres of the road allowance would come from the station grounds of the GTP on Pasqua IR 79.
47. On June 30, 1920, the DIA wrote the GTP and confirmed that only 1.58 acres of reserve land was required from Pasqua IR79.

48. The DIA further confirmed that the land was valued at \$20 per acre and that the GTP was required to pay \$31.60 in compensation. Once compensation was received, the roadway would be transferred to the Province of Saskatchewan.
49. On September 15, 1920, the GTP paid \$31.60 to the DIA which was deposited into the Pasqua First Nation's capital account.
50. On October 9, 1920, Order in Council P.C. 2418 transferred 1.58 acres of Pasqua reserve land along the eastern boundary to the Province of Saskatchewan for road purposes.

Current Ownership

51. In 1923, the GTP amalgamated with the National Transcontinental and the Canadian Northern Railway to form the Canadian National Railways (CN) system.
52. CN's title on the right-of-way station grounds is still active and the railway right-of-way through Pasqua IR 79 is still in use.
53. The Province of Saskatchewan's title to the 1920 road diversion is still active.

**V. Relief (R. 42(f))**

54. The Crown seeks the following relief:
  - a. Dismissal of all claims set out in the Declaration of Claim;
  - b. costs; and
  - c. such further relief as this Honourable Tribunal deems just.

**VI. Communication (R. 42(g))**

55. The Respondent's address for the service of documents is:

Department of Justice (Canada)  
Prairie Regional Office (Saskatoon)  
10<sup>th</sup> Floor, 123-2<sup>nd</sup> Avenue S  
Saskatoon, SK S7K 7E6  
Attention: David Smith

56. Facsimile number for service is (306) 975-5013.

57. Email address for service is [saskSCT-5003-16-pasqua@justice.gc.ca](mailto:saskSCT-5003-16-pasqua@justice.gc.ca)

Dated this 12 day of December, 2016.



**ATTORNEY GENERAL OF CANADA**

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