

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	July 6, 2020	D É P O S É
Isabelle Bourassa		
Ottawa, ON	5	

SCT File No.: SCT-6004-19

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

PAUL FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
As represented by the Minister of Crown-Indigenous Relations and Northern Affairs

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*.

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Counsel for the Claimant  
Paul First Nation #440

## **I. Overview**

1. The Respondent, Her Majesty the Queen 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. Canada acknowledges these principles as it attempts to assist the Specific Claims Tribunal (“Tribunal”) in adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada is open to using the processes of the Tribunal to facilitate the resolution of issues and to narrow the matters for determination.
3. The Paul First Nation’s Declaration of Claim alleges that Canada acted unlawfully when it consented to reserve lands set apart for the use and benefit of the Paul First Nation being taken for railway purposes. The Declaration of Claim raises issues as to whether Canada breached fiduciary duties owed to the Paul First Nation: (a) in failing to obtain adequate compensation for those lands taken for railway purposes; or (b) in transferring an interest in those lands that did not minimally impair the Paul First Nation’s interest.
4. Canada acknowledges that, in 1908, the Governor General in Council issued an Order in Council authorizing the disposition of certain lands to the Grand Trunk Pacific Railway Company for railway purposes. The Grand Trunk Pacific Railway Company paid the amount of compensation that Canada required. This compensation was adequate, and there was no breach of fiduciary duty.
5. Canada did not breach or fail to comply with any lawful obligation, statute or fiduciary duty. Canada acted with lawful authority. The disposition of lands to the Grand Trunk Pacific Railway Company or its successor, the Canadian National Railway Company (“CN”), minimally impaired the Paul First Nation’s interest in such lands.

6. The interest in land acquired by the Grand Trunk Pacific Railway Company or CN remains subject to the provisions of the applicable *Indian Act* and *Railway Act* (including the restraint against alienation). The interest in land acquired by the Grand Trunk Pacific Railway Company or CN was something less than a fee simple absolute.

## **II. Status of Claim (R. 42(a))**

7. Canada admits that the requirements in paragraph 16(1)(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“SCTA”) are satisfied as pleaded in paragraphs 2 – 3 of the Declaration of Claim. The particulars are:
  - a. The Minister of Indian Affairs and Northern Development, now the Minister of Crown-Indigenous Relations (“Minister”), received the Paul First Nation’s specific claim on December 1, 2004.
  - b. The Paul First Nation’s specific claim was filed with the Minister on October 16, 2008.
  - c. On December 24, 2010, Canada advised the Paul First Nation that its specific claim did not disclose an outstanding lawful obligation on the part of Canada.

## **III. Canada’s Position Regarding the Validity of the Claim (R. 42(b) and (c))**

8. Canada does not accept the validity of the claim set out in the Declaration of Claim.
9. Canada denies that it breached, or failed to comply with, any lawful obligation, statute or fiduciary duty in consenting to the disposition of lands to the Grand Trunk Pacific Railway Company for railway purposes. Canada further denies that it acted without lawful authority.

10. If the Tribunal should find that the claim of the Paul First Nation is valid, Canada states that:
  - a. Paragraphs 20(1)(a) to (c) of the *SCTA* may provide the basis for the Tribunal to award compensation.
  - b. This is subject, however, to any applicable deduction or set-off from such compensation calculated in accordance with subsection 20(3) of the *SCTA*.

**IV. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))**

***A. The Paul First Nation***

11. In response to paragraph 1 of the Declaration of Claim, Canada acknowledges that the Paul First Nation is a “First Nation” within the meaning of section 2 of the *SCTA*, and a “band” within the meaning of subsection 2(1) of the *Indian Act*, RSC 1985, c I-5. Canada further acknowledges that the Paul First Nation is located in central Alberta.

***B. Treaty No. 6***

12. In response to paragraph 6 of the Declaration of Claim, Canada acknowledges that:
  - a. In August and September 1876, at or near Fort Carlton, Fort Pitt and Battle River, Canada entered into Treaty No. 6 with certain “Plain and Wood Cree and the other Tribes of Indians” in what is now central Saskatchewan and Alberta.
  - b. Approximately one year later, in or about August 1877, Chief Alexis of the Alexis First Nation signed an adhesion to Treaty No. 6.
  - c. When Chief Alexis adhered to Treaty No. 6, the ancestors of the Paul First Nation were viewed as members of Alexis First Nation.

- d. Consequently, Canada admits that the Paul First Nation has adhered to Treaty No. 6.

***C. Recognition as Separate First Nation / Survey & Establishment of Reserves***

13. In response to paragraph 7 of the Declaration of Claim, Canada acknowledges that:
  - a. At or around the time of the adhesion to Treaty No. 6, Ironhead was a Headman of the Alexis First Nation.
  - b. By 1880, Headman Ironhead and his followers resided at, or near, White Whale Lake (now known as Wabamun Lake). By contrast, Chief Alexis and his followers resided at, or near, Lake St. Anne.
  - c. After Headman Ironhead passed away in or about 1886 or 1887, his followers became followers of Paul, who was a Headman under Chief Alexis. At some point, this group became known as “Paul’s Band” (now the Paul First Nation).
  
14. In response to paragraphs 8 – 9 of the Declaration of Claim, Canada states that:
  - a. In November and December 1891, John C. Nelson, a Dominion Land Surveyor, surveyed a reserve and a fishing station at, or near, White Whale Lake for the members of Chief Alexis’s First Nation to whom a reserve had not yet been allotted. By this point, the members were followers of Paul, one of Chief Alexis’s Headmen.
  - b. By Order in Council P.C. No. 1633 dated June 16, 1892, these lands, which amounted to 32.7 square miles (or 20,928 acres), more or less, were withdrawn from the operation of *The Dominion Lands Act*, RSC 1886, 49 Victoria, c 54.
  - c. At that time, these lands became known as Indian Reserve No. 133A (“IR 133A”), consisting of 20,293 acres, more or less, and Indian Reserve No. 133B (“IR 133B”), consisting of 635 acres, more or less.

***D. Response relating to Canadian Northern Railway Company***

15. In response to paragraphs 10 – 16, 19 – 25, 32 and 33 of the Declaration of Claim, Canada states that:
- a. These paragraphs relate to the Canadian Northern Railway Company and its proposal in or about 1906 for a right-of-way through IR 133A or IR 133B.
  - b. Ultimately, the Canadian Northern Railway Company did not proceed with its proposal for a right-of-way through IR 133A or IR 133B.
  - c. As a result, the Canadian Northern Railway Company did not take any lands from either IR 133A or IR 133B.
  - d. These paragraphs in the Declaration of Claim are not relevant to the within proceeding.

***E. 1906 Surrender of IR 133B***

16. In response to paragraph 17 of the Declaration of Claim:
- a. Canada admits that Secretary J.D. McLean of the Department of Indian Affairs wrote to Indian Agent Gibbons on July 31, 1906 to advise that an application had been made to the Department of Indian Affairs for a portion of IR 133A and IR 133B (i.e. the north-west corner). He inquired whether the Paul First Nation would be willing to surrender this land so that it could be sold for its benefit.
  - b. Canada admits that Indian Agent Gibbons held an initial conference with the Paul First Nation on August 14, 1906 in order to ascertain whether the Paul First Nation was inclined to surrender the north-west corner of the reserve lands. Indian Agent Gibbons reported that the majority were willing to surrender the land in question. This was on the condition that the portion of land that borders on White Whale Lake, and is suitable for a townsite or resort,

should be plotted and put up for sale, and that the remainder of the land should be disposed of to the best advantage of the Paul First Nation.

- c. Canada states that, on September 1, 1906, the Deputy Superintendent General of Indian Affairs wrote to Indian Agent Gibbons enclosing a form of surrender that could be submitted to the Paul First Nation for its consideration in accordance with the *Indian Act*.
17. In response to paragraph 18 of the Declaration of Claim:
- a. Canada admits that the Paul First Nation surrendered IR 133B, consisting of 635 acres, on September 11, 1906 (“1906 Surrender”).
  - b. On September 20, 1906, the Superintendent General of Indian Affairs recommended that the Governor General in Council accept the 1906 Surrender of IR 133B.
  - c. Canada admits that, on September 27, 1906, the Governor General in Council issued an Order in Council accepting the 1906 Surrender of IR 133B.
18. In response to paragraph 19 of the Declaration of Claim, Canada admits that the 1906 Surrender is the subject of a separate claim commenced by the Paul First Nation and currently before the Tribunal, namely, SCT-6001-16.

***F. Grand Trunk Pacific Railway Company and the Railway Lands***

19. In response to paragraph 26 of the Declaration of Claim, Canada admits that, by 1907, the Grand Trunk Pacific Railway Company had expressed an intention to secure a right-of-way in order to run a railway line through IR 133A and IR 133B. By way of further particulars, Canada states that:
- a. In or about December 1906, the Grand Trunk Pacific Railway Company applied to the Department of Indian Affairs for a right-of-way on IR 133A and IR 133B.

- b. In or about May 1907, the Grand Trunk Pacific Railway Company applied to the Department of Indian Affairs for an Order in Council, pursuant to section 175 of the *Railway Act*, allowing it to have a right-of-way through IR 133A and IR 133B.
  
20. In response to paragraph 27 of the Declaration of Claim, Canada admits that, in December 1907, S. Bray, Chief Surveyor of the Department of Indian Affairs, recommended to the Deputy Minister that Grand Trunk Pacific Railway Company's application for a right-of-way be handled in the following manner:
  - a. That a valuation be made of the land required by Grand Trunk Pacific Railway Company for its right-of-way.
  - b. The Grand Trunk Pacific Railway Company be requested to pay for the land required in accordance with the valuation.
  - c. An Order in Council be applied for, authorizing the granting of the right-of-way to the Grand Trunk Pacific Railway Company.
  
21. In response to paragraph 28 of the Declaration of Claim, Canada admits that, on January 4, 1908, the Superintendent General of Indian Affairs provided a memorandum to the Governor General in Council stating that:
  - a. The Grand Trunk Pacific Railway Company had applied for the purchase of a right-of-way through IR 133A and IR 133B, and station grounds on IR 133A.
  - b. The application included a certificate from the Chief Engineer of the Department of Railways and Canals indicating that the lands were required for railway purposes and, as such, the Grand Trunk Pacific Railway Company should be allowed to acquire the land under section 46 of the *Indian Act*, RSC 1906, c 81 ("1906 Indian Act").

- c. The Superintendent General of Indian Affairs recommended that the Governor General in Council authorize the disposition of the lands to the Grand Trunk Pacific Railway Company, under section 46 of the *1906 Indian Act*, upon such terms as may be agreed to.
  
22. In response to paragraph 29 of the Declaration of Claim, Canada admits that, on January 8, 1908, the Governor General in Council issued Order in Council P.C. No. 36 authorizing the disposition of lands to the Grand Trunk Pacific Railway Company for the right-of-way on IR 133A and IR 133B, and for station grounds on IR 133A, under section 46 of the *1906 Indian Act*, upon such terms as may be agreed to.
  
23. In response to paragraph 30 of the Declaration of Claim, Canada states that the Grand Trunk Pacific Railway Company acquired the following lands for railway purposes (collectively, “Railway Lands”):
  - a. 151.54 acres, more or less, from IR 133A, which were valued by Canada at \$15.00 per acre, for a total of \$2,273.10.
  - b. 16.26 acres, more or less, in the Wabamun townsite (which lands were part of the 1906 Surrender of IR 133B), which were valued by Canada at approximately \$120.00 per acre, for a total of \$1,954.00.
  
24. In further response to paragraph 30 of the Declaration of Claim, Canada states that:
  - a. In March 1908, the Grand Trunk Pacific Railway Company paid the full amount of \$4,227.10 (that is, \$2,273.10 + \$1,954.00) to Canada for the Railway Lands.
  - b. In making this payment, however, the Grand Trunk Pacific Railway Company stated that:
    - i. Its payment was subject to its Right of Way Agent confirming this valuation of the Railway Lands;

- ii. If the Grand Trunk Pacific Railway Company did not confirm this valuation, then:
  - (1) The Grand Trunk Pacific Railway Company requested that the Department of Indian Affairs reconsider its valuation; and
  - (2) If the parties were unable to reach an agreement on the valuation, then, the valuation would be subject to the usual arbitration proceedings.
- c. In February 1912, the Grand Trunk Pacific Railway Company advised that the valuation of the Railway Lands was satisfactory and requested that the Department of Indian Affairs arrange for the transfer of the Railway Lands to the Grand Trunk Pacific Railway Company.
- d. In February 1912, the Department of Indian Affairs recorded the transactions involving the Railway Lands in its Land Sales Book.

***G. July 1908 Band Council Resolution from the Paul First Nation***

25. In response to paragraph 31 of the Declaration of Claim, Canada admits that:
- a. On July 28, 1908, the Chief and Principal Man of the Paul First Nation signed a Band Council Resolution (“July 1908 BCR”).
  - b. In part, the July 1908 BCR authorized Canada to enter into an agreement with the Grand Trunk Pacific Railway Company for the placement and operation of a railway station on its railway line within Section 6, Township 53, Ranges 3 and 4, West of the 5<sup>th</sup> Meridian.
  - c. In addition, the July 1908 BCR indicated that the Paul First Nation authorized Canada to give the Grand Trunk Pacific Railway Company one block of land (approximately three acres) for station grounds, and every fourth block of the subdivisions surveyed in 1906, within Section 6, Township 53, Ranges 3 and 4, West of the 5<sup>th</sup> Meridian.

26. In further response to paragraph 31 of the Declaration of Claim, Canada states that:
- a. The July 1908 BCR purports to deal with lands that were part of IR 133B. However, the Paul First Nation had surrendered such lands to Canada in the 1906 Surrender.
  - b. In addition, the July 1908 BCR deals with the Railway Lands that had already been disposed of to the Grand Trunk Pacific Railway Company pursuant to Order in Council P.C. No. 36, and for which the Grand Trunk Pacific Railway Company had already paid compensation in March 1908.
  - c. Further, while the Grand Trunk Pacific Railway Company initially intended to acquire lands for station grounds, such lands were part of IR 133A, and not IR 133B.
  - d. In any event, as early as September 1908, the Grand Trunk Pacific Railway Company advised that it was practically impossible to construct a railway station on the town plot (part of IR 133B prior to the 1906 Surrender) due to the steep gradient of the land.

***H. Relationship between the Grand Trunk Pacific Railway Company and CN***

27. In response to paragraph 34 of the Declaration of Claim, Canada states as follows:
- a. On or about March 4, 1919, the Grand Trunk Pacific Railway Company advised Canada that it would not be able to continue its operations when its present funds were exhausted, which was expected to occur on or about March 10, 1919.
  - b. In response, in March 1919, the Governor General in Council issued Order in Council P.C. No. 517 appointing the Minister of Railways and Canals as the Receiver of the “Grand Trunk Pacific Railway System” (which included, among other things, the lines of railway and appurtenances, and the undertakings and works, of the Grand Trunk Pacific Railway Company). This Order in Council was ratified and confirmed, and declared to be valid and

binding, by *An Act to confirm two Orders of the Governor in Council respecting the Grand Trunk Pacific Railway System*, 9 – 10 George V., c 22.

- c. By way of Order in Council dated January 20, 1923, the Governor in Council entrusted the management and operation of the “Canadian Government Railways”, which included the Grand Trunk Pacific Railway Company, to CN.
- d. By way of Order in Council P.C. No. 1011 dated May 27, 1927, the Governor General in Council declared that the Receivership of the Grand Trunk Pacific Railway Company was terminated as of May 31, 1927.

***I. Grant of Letters Patent in the Railway Lands to CN***

- 28. In response to paragraph 35 of the Declaration of Claim:
  - a. Canada states that the letters patent issued to CN in relation to the Railway Lands are dated January 25, 1960.
  - b. Canada admits that the Railway Lands were not registered with the North Alberta Land Registration District of the Alberta Land Titles Office until February 4, 1960.

***J. Responses to the Asserted Breaches of Lawful Obligations***

***1) General Response***

- 29. In response to paragraphs 36 – 40 of the Declaration of Claim, Canada denies that it has breached, or failed to comply with, any lawful obligation, statute or fiduciary duty. Canada further denies that it has acted without lawful authority.

**2) Response to Allegations related specifically to IR 133A**

30. In further response to paragraph 36 of the Declaration of Claim, which deals specifically with IR 133A:
- a. Canada acknowledges that Order in Council P.C. No. 36 (dated January 8, 1908), which authorized the disposition of the Railway Lands to the Grand Trunk Pacific Railway Company, expressly references only section 46 of the *1906 Indian Act*.
  - b. As described in further detail below, however, Canada states that the disposition of the Railway Lands in IR 133A was also governed by, and subject to, the *Railway Act*, RSC 1906, 3 Edward VII, c 37 (“*1906 Railway Act*”), especially sections 172 and 175.
  - c. Canada states that it complied with both the *1906 Indian Act* and the *1906 Railway Act* in the disposition of the Railway Lands from IR 133A.
  - d. Canada denies that it lacked the lawful authority to issue the letters patent to the Railway Lands to CN.
  - e. CN was the successor to the Grand Trunk Pacific Railway Company.
  - f. The letters patent perfected, or purported to perfect, the transaction authorized by Order in Council P.C. No. 36 dated January 8, 1908.
  - g. In any event, the taking of the Railway Lands did not occur when CN, as the successor, took steps to register the letters patent with the North Alberta Land Registration District of the Alberta Land Titles Office in 1960. Rather, the taking of the Railway Lands occurred at an earlier point in time, specifically:
    - i. In 1908, when the Governor in Council issued Order in Council P.C. No. 36; or

- ii. Alternatively, in 1908, after the Grand Pacific Railway Company paid the compensation for the Railway Lands; or
- iii. Alternatively, at the latest, in 1912, when:
  - (1) The Grand Trunk Pacific Railway Company advised that the valuation of the Railway Lands was satisfactory and requested that the Department of Indian Affairs arrange for the transfer of the Railway Lands to the Grand Trunk Pacific Railway Company; and
  - (2) The Department of Indian Affairs recorded the transactions involving the Railway Lands in its Land Sales Book.

**3) *Response to Allegations related specifically to IR 133B***

31. In further response to paragraph 37 of the Declaration of Claim, which deals specifically with IR 133B:
- a. If the 1906 Surrender did not effect a proper surrender of IR 133B, as asserted by the Paul First Nation, then:
    - i. Canada acknowledges that section 46 of the *1906 Indian Act* applied to the disposition of the Railway Lands therefrom (as the lands in question would have been “reserve” lands at the material time);
    - ii. In addition, as described in further detail below, Canada states that the disposition of the Railway Lands in IR 133B was also governed by, and subject to, the *1906 Railway Act*, especially sections 172 and 175;
    - iii. Canada denies that the disposition of the Railway Lands therefrom was null and void.

- b. In the alternative, if the 1906 Surrender effected a proper surrender of IR 133B, then:
  - i. Section 46 of the *1906 Indian Act* may not have applied to the disposition of that portion of the Railway Lands which had been surrendered by the 1906 Surrender;
  - ii. In any event, as described in further detail below, Canada states that the disposition of the Railway Lands formerly in IR 133B was governed by, and subject to, the *1906 Railway Act*, especially section 172.

***4) Response to Allegations related to the authority for the Letters Patent***

32. In further response to paragraph 38 of the Declaration of Claim:
- a. Canada denies that there was a lack of statutory authority and, consequently, a lack of legal basis, for the letters patent issued to CN.
  - b. As noted previously, CN was the successor to the Grand Trunk Pacific Railway Company. As such, the letters patent perfected, or purported to perfect, the transaction authorized by Order in Council P.C. No. 36 dated January 8, 1908.
  - c. In any event, while section 46 of the *1906 Indian Act* was no longer in force in 1960, there was a similar provision in effect, namely, section 35 of the *Indian Act*, RSC 1952, c 149.

***5) Response to Allegations related to the Compensation for Railway Lands***

33. In further response to paragraph 39 of the Declaration of Claim, Canada denies that it failed to obtain adequate compensation for the Paul First Nation in relation to the disposition of the Railway Lands to the Grand Trunk Pacific Railway Company. Accordingly, Canada further denies that there has been any breach of fiduciary duty.

***6) Response to Allegation of Breach of Duty to Minimally Impair***

34. In further response to paragraph 40 of the Declaration of Claim:
- a. Canada accepts that, once it has been determined that a taking of reserve lands is in the public interest, a fiduciary duty arises on the part of Canada to grant only the minimum interest required in order to fulfill the public purpose (in this case the building of a railway), thereby ensuring a minimal impairment of reserve lands.
  - b. In the circumstances, Canada denies that it breached a fiduciary duty to minimally impair the interest of the Paul First Nation in authorizing a disposition of the Railway Lands. Canada's response to this issue is expanded upon below.

***7) Rationale for the Application of the 1906 Railway Act***

35. In response to the whole of the Declaration of Claim, Canada states that, at all material times, the disposition of the Railway Lands to the Grand Trunk Pacific Railway Company was governed by, and subject to, the *1906 Railway Act*. In this regard, Canada pleads and relies upon the following:
- a. *An Act to incorporate the Grand Trunk Pacific Railway Company*, SC 1903, 3 Edward VII, c 122, especially section 30 thereof.
  - b. *An Act respecting the construction of a National Transcontinental Railway*, SC 1903, 3 Edward VII, c 71, especially section 2 thereof.
  - c. An Agreement made July 29, 1903 between His Majesty the King in right of Canada, represented by the Honourable William S. Fielding, the Acting Minister of Railways and Canals, and by Sir Charles Rivers Wilson and others on behalf of the Grand Trunk Pacific Railway Company ("1903 Agreement"), especially section 38 thereof.

36. As a result of the foregoing:
- a. Section 175 of the *1906 Railway Act* applied to the taking of those Railway Lands that were part of a “reserve” at the material times.
  - b. Both section 175 of the *1906 Railway Act* and section 46 of the *1906 Indian Act* required the consent of the Governor in Council to the taking of reserve lands and the payment of compensation. Canada states that both statutory provisions (section 175 of the *1906 Railway Act* and section 46 of the *1906 Indian Act*) were complied with in the present circumstances.
  - c. In addition, at all material times, the Grand Trunk Pacific Railway Company was expressly prohibited from alienating the Railway Lands which it acquired. In this regard, the Railway Lands were taken subject to the statutory prohibition against alienation as provided for in section 172 of the *1906 Railway Act*. For the sake of certainty, this statutory prohibition against alienation applied to “lands vested in the Crown.”

**8) *Interest in Railway Lands conveyed to Grand Trunk Pacific Railway***

37. In further response to the whole of the Declaration of Claim, and to paragraphs 36 – 40 in particular, Canada states that:
- a. Section 46 of the *1906 Indian Act* authorizes the taking or use of a range of interests in land up to and including a fee simple absolute interest.
  - b. However, in the circumstances, Order in Council P.C. No. 36 and the letters patent must be read subject to the restraint against alienation as provided for in section 172 of the *1906 Railway Act*.
  - c. As a result, Order in Council P.C. No. 36 and the letters patent provided an interest in the Railway Lands that is less than a fee simple absolute. Therefore, there has been no breach of the fiduciary duty of minimal impairment.

***K. Response to the Relief Sought by the Paul First Nation***

38. In response to the incorrectly numbered paragraph 12 under heading “VII. Relief Sought” of the Declaration of Claim, Canada states as follows:
- a. The Paul First Nation is purporting to claim relief other than compensation. In particular, Canada refers to the Orders sought in sub-paragraphs 12.v. and 12.vi. of “VII. Relief Sought.”
  - b. Such relief is contrary to the restrictions for filing a claim under the *SCTA*. In particular, Canada pleads and relies upon paragraph 15(4)(b) thereof.
  - c. Further, such relief is beyond the jurisdiction of the Tribunal, which can award only monetary compensation. In particular, Canada pleads and relies upon paragraph 20(1)(a) of the *SCTA*.

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

***A. General***

39. Canada relies upon the facts set out under heading “IV. Allegations of Fact – Declaration of Claim”.

***B. Treaty No. 6***

40. In August and September 1876, at or near Fort Carlton, Fort Pitt and Battle River, Canada entered into Treaty No. 6 with certain “Plain and Wood Cree and the other Tribes of Indians” in what is now central Saskatchewan and Alberta.
41. In or about August 1877, Chief Alexis of the Alexis First Nation signed an adhesion to Treaty No. 6.
42. When Chief Alexis adhered to Treaty No. 6, the ancestors of the Paul First Nation were viewed as members of Alexis First Nation.
43. Canada admits that the Paul First Nation has adhered to Treaty No. 6.

***C. Recognition as Separate First Nation / Survey & Establishment of Reserves***

44. At or around the time of the adhesion to Treaty No. 6, Ironhead was a Headman of the Alexis First Nation.
45. By 1880, Headman Ironhead and his followers resided at, or near, White Whale Lake (now known as Wabamun Lake). By contrast, Chief Alexis and his followers resided at, or near, Lake St. Anne.
46. After Headman Ironhead passed away in or about 1886 or 1887, his followers became followers of Paul. At some point, this group became known as “Paul’s Band” (now the Paul First Nation).
47. In November and December 1891, John C. Nelson, a Dominion Land Surveyor, surveyed a reserve and a fishing station at, or near, White Whale Lake for the members of Chief Alexis’s First Nation to whom a reserve had not yet been allotted. By this point, the members were followers of Paul, one of Chief Alexis’s Headmen.
48. By Order in Council P.C. No. 1633 dated June 16, 1892, these lands, which amounted to 32.7 square miles (or 20,928 acres), more or less, were withdrawn from the operation of *The Dominion Lands Act*.
49. These lands became known as IR No. 133A, consisting of 20,293 acres, more or less, and IR 133B, consisting of 635 acres, more or less.

***D. 1906 Surrender of IR 133B***

50. On July 31, 1906, Secretary J.D. McLean of the Department of Indian Affairs wrote to Indian Agent Gibbons to advise that an application had been made to the Department of Indian Affairs for a portion of IR 133A and IR 133B. He inquired whether the Paul First Nation would be willing to surrender this land so that it could be sold for its benefit.

51. Indian Agent Gibbons held an initial conference with the Paul First Nation on August 14, 1906 in order to ascertain whether the Paul First Nation was inclined to surrender the north-west corner of the reserve lands. Indian Agent Gibbons reported that the majority were willing to surrender the land in question. This was on the condition that the portion of land that borders on White Whale Lake and is suitable for a townsite or resort should be plotted and put up for sale, and that the remainder of the land should be disposed of to the best advantage of the Paul First Nation.
52. On September 1, 1906, the Deputy Superintendent General of Indian Affairs wrote to Indian Agent Gibbons enclosing a form of surrender that could be submitted to the Paul First Nation for its consideration in accordance with the *Indian Act*.
53. The 1906 Surrender, by which the Paul First Nation surrendered IR 133B, occurred on September 11, 1906.
54. On September 20, 1906, the Superintendent General of Indian Affairs recommended that the Governor in Council accept 1906 Surrender of IR 133B.
55. On September 27, 1906, the Governor General in Council issued an Order in Council accepting the 1906 Surrender of IR 133B.
56. The 1906 Surrender is the subject of a separate claim commenced by the Paul First Nation and currently before the Tribunal, namely, SCT-6001-16.

***E. Grand Trunk Pacific Railway Company and the Railway Lands***

57. By 1907, the Grand Trunk Pacific Railway Company had expressed an intention to secure a right-of-way in order to run a railway line through IR 133A and IR 133B. By way of further particulars, Canada states that:
  - a. In or about December 1906, the Grand Trunk Pacific Railway Company applied to the Department of Indian Affairs for a right-of-way and other railway purposes on IR 133A and IR 133B.

- b. In or about May 1907, the Grand Trunk Pacific Railway Company applied to the Department of Indian Affairs for an Order in Council, pursuant to section 175 of the *Railway Act*, allowing it to have a right-of-way through IR 133A and IR 133B.
58. In December 1907, S. Bray, Chief Surveyor of the Department of Indian Affairs, recommended to the Deputy Minister that Grand Trunk Pacific Railway Company's application for a right-of-way be handled in the following manner:
- a. That a valuation be made of the land required by Grand Trunk Pacific Railway Company for its right-of-way.
  - b. The Grand Trunk Pacific Railway Company be requested to pay for the land required in accordance with the valuation.
  - c. An Order in Council be applied for authorizing the granting of the right-of-way to the Grand Trunk Pacific Railway Company.
59. On January 4, 1908, the Superintendent General of Indian Affairs provided a memorandum to the Governor General in Council stating that:
- a. The Grand Trunk Pacific Railway Company had applied for the purchase of a right-of-way through IR 133A and IR 133B, and station grounds on IR 133A.
  - b. The application included a certificate from the Chief Engineer of the Department of Railways and Canals indicating that the lands were required for railway purposes and, as such, the Grand Trunk Pacific Railway Company should be allowed to acquire the land under section 46 of the *1906 Indian Act*.
  - c. The Superintendent General of Indian Affairs recommended that the Governor General in Council authorize the disposition of the lands to the Grand Trunk Pacific Railway Company, under section 46 of the *1906 Indian Act*, upon such terms as may be agreed to.

60. On January 8, 1908, the Governor General in Council issued Order in Council P.C. No. 36 authorizing the disposition of lands to the Grand Trunk Pacific Railway Company for the right-of-way on IR 133A and IR 133B, and for station grounds on IR 133A, under section 46 of the *1906 Indian Act*, upon such terms as may be agreed to.
61. As a result, the Grand Trunk Pacific Railway Company acquired the following Railway Lands:
  - a. 151.54 acres, more or less, from IR 133A, which were valued by Canada at \$15.00 per acre, for a total of \$2,273.10.
  - b. 16.26 acres, more or less, in the Wabamun townsite (which lands were part of the 1906 Surrender of IR 133B), which were valued by Canada at approximately \$120.00 per acre, for a total of \$1,954.00.
62. In March 1908, the Grand Trunk Pacific Railway Company paid the full amount of \$4,227.10 (that is, \$2,273.10 + \$1,954.00) to Canada for the Railway Lands. In making this payment, however, the Grand Trunk Pacific Railway Company stated that:
  - a. Its payment was subject to its Right of Way Agent confirming this valuation of the Railway Lands.
  - b. If the Grand Trunk Pacific Railway Company did not confirm this valuation, then:
    - i. The Grand Trunk Pacific Railway Company requested that the Department of Indian Affairs reconsider its valuation; and
    - ii. If the parties were unable to reach an agreement on the valuation, then, the valuation would be subject to the usual arbitration proceedings.

63. In February 1912, the Grand Trunk Pacific Railway Company advised that the valuation of the Railway Lands was satisfactory and requested that the Department of Indian Affairs arrange for the transfer of the Railway Lands to the Grand Trunk Pacific Railway Company.
64. In February 1912, the Department of Indian Affairs recorded the transactions involving the Railway Lands in its Land Sales Book.

***F. Relationship between the Grand Trunk Pacific Railway Company and CN***

65. On or about March 4, 1919, the Grand Trunk Pacific Railway Company advised Canada that it would not be able to continue its operations when its present funds were exhausted, which was expected to occur on or about March 10, 1919.
66. In response, in March 1919, the Governor General in Council issued Order in Council P.C. No. 517 appointing the Minister of Railways and Canals as the Receiver of the “Grand Trunk Pacific Railway System” (which included, among other things, the lines of railway and appurtenances, and the undertakings and works, of the Grand Trunk Pacific Railway Company). This Order in Council was ratified and confirmed, and declared to be valid and binding, by *An Act to confirm two Orders of the Governor in Council respecting the Grand Trunk Pacific Railway System*, 9 – 10 George V., c 22.
67. The Governor in Council issued an Order in Council dated January 20, 1923, entrusting the management and operation of the Grand Trunk Pacific Railway Company to CN.
68. By way of Order in Council P.C. No. 1011 dated May 27, 1927, the Governor General in Council declared that the Receivership of the Grand Trunk Pacific Railway Company was terminated as of May 31, 1927.

***G. Grant of the Letters Patent in the Railway Lands to CN***

69. In 1960, Canada provided CN with letters patent in relation to the Railway Lands.

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

70. Canada seeks the following relief:

- a. Dismissal of the Declaration of Claim in its entirety (including the costs incurred in the Specific Claims process);
- b. In the alternative, if the Tribunal finds Canada liable to pay compensation to the Paul First Nation then Canada relies upon subsection 20(3) of the *SCTA* in order to claim a deduction or set-off of the value of any benefit received by the Paul First Nation from such compensation deemed to be owed;
- c. Costs; and
- d. Such further relief as Canada may request and this Tribunal deems just.

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

71. Canada's address for the service of documents is:

Department of Justice Canada  
Prairie Region (Edmonton Office)  
300 EPCOR Tower, 10423 – 101 Street  
Edmonton, Alberta  
T5H 0E7  
**Attention: Dalal Moullem / Shaun Mellen**

72. The facsimile number for service of documents on Canada is 780-495-2964.

73. The e-mail address for the service of documents on Canada is:

[dalal.moullem@justice.gc.ca](mailto:dalal.moullem@justice.gc.ca)

[shaun.mellen@justice.gc.ca](mailto:shaun.mellen@justice.gc.ca)

**DATED** at the City of Edmonton, in the Province of Alberta, this 6<sup>th</sup> day of July 2020.

*Dalal Mouallem* “Digitally Signed”

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*Shaun Mellen* “Digitally Signed”

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Her Majesty the Queen in Right of Canada