

Original filed March 26, 2021

SCT File No.: SCT 7002 – 20

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

BRIDGE RIVER INDIAN BAND

Claimant

v.

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

Respondent

FIRST AMENDED RESPONSE

Pursuant to Rule 42 **and Rule 5** of the *Specific Claims Tribunal Rules of Practice and Procedure*; **and Rule 200 of the Federal Court Rules**

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

TO: BRIDGE RIVER INDIAN BAND
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I. Context

1. On July 17, 2020, the Claimant Bridge River Indian Band (the “Band”), filed a Declaration of Claim (the “Declaration of Claim”), with the Specific Claims Tribunal (the “Tribunal”).
2. In its Declaration of Claim, the Band asserts breaches of legal and fiduciary obligations on the part of Her Majesty the Queen in Right of Canada (the “Crown”) between about 1899 and 1915 with respect to the Province of British Columbia’s (“BC”) establishment of a trail, and then a wagon road, on land allocated in 1881 by Indian Reserve Commissioner O’Reilly (“O’Reilly”) for Bridge River reserve No.1, including: failure to consult the Band, failure to take reasonable steps to protect the Band’s interest in the land, and failure to ensure that the Band received adequate compensation.
3. The Band also asserts breaches of legal and fiduciary obligations on the part of the Crown between about 1938 and 1961, including: failure to ascertain BC’s intentions in regard to widening the road, failure to consult the Band, failure to take steps to minimize impacts of the road right-of-way, failure to ensure that the Band obtained adequate compensation, and failure to prevent BC from using or occupying the road in order to widen it, before the Governor-in-Council by way of Order-in-Council 1961-210, dated February 16, 1961, consented to the transfer of the road.
4. The Band also asserts that as a consequence of Canada’s failure to discharge its fiduciary obligations to the Band, the construction of the road in the late 1950s caused damage to IR1 and to improvements on IR1.
5. The Band also asserts that BC constructed works to support the road outside the boundaries of the road right-of-way identified in survey plan No. 50252, and that this has interfered with the Band’s use and occupation of IR1.
6. Canada is committed to the principles of reconciliation, and to the Attorney General of Canada’s Directive on Civil Litigation Involving Indigenous Peoples. It is hoped

that this Response will assist Canada and the Band to work collaboratively to resolve the claims set out in the Declaration of Claim either by this proceeding or through alternative dispute resolution, including negotiation.

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

7. The Band submitted a claim to the Specific Claims Branch (“SCB”), received on March 4, 2003.
8. The Band made additional submissions dated October 19, 2004 to SCB. This claim was filed with the Minister of Indian Affairs and Northern Development Canada (“Minister”) on October 16, 2008 (“Specific Claim”).
9. By letter dated November 24, 2008, the Band was invited to provide the SCB with additional documents, information and arguments that were not in the original claim submission. By letter dated May 25, 2009, the Band sent SCB additional documents, information and argument.
10. By letter dated September 13, 2011, the Minister notified the Band of the Minister’s decision to not accept the Specific Claim for negotiation on the basis that the Specific Claim did not disclose an outstanding lawful obligation on behalf of the Crown.

III. Validity (R. 42(b) and (c))

11. The Crown does not admit the validity of the claims based on all grounds in the Declaration of Claim, except as follows under this heading “III Validity”.

11.1 The Crown admits that it breached a fiduciary duty to seek compensation for the road on provisional Bridge River Indian Reserve No. 1 retained by the Province under the terms of the 1938 provincial Order-in-Council 1036.

11.2 The Crown admits that it breached a fiduciary duty to obtain proper compensation when 84.37 acres of unimproved lands used for the road were transferred to the Province in

1961, except to the extent that those lands overlap with the road that was retained by Province in 1938.

IV. Admissions, Denials or No Knowledge (Rule 42(d))

Allocation of IR1

12. In response to the Declaration of Claim paragraph 6, the Crown admits that the Band, also known as Xwísten, is an Indigenous group that is part of the St'át'imc Nation.
13. In response to paragraph 7, the Crown admits that Bridge River Indian Reserve No. 1 ("IR1") is located within the traditional territory of the St'át'imc Nation.
14. In response to paragraph 8, the Crown admits that O'Reilly allocated land for IR1 to the "Bridge River Indians" by way of Minute of Decision dated September 1, 1881.
15. In response to paragraph 9, the Crown admits that O'Reilly's Minute of Decision, dated September 1, 1881, allocated the land for IR1 as:

No. 1 [] A Reserve of 6500 acres, approximately, situated on both banks of Bridge river, from its mouth upstream for 13 ½ miles, extending in width from base to base of the mountains, an average distance of ¾ mile, including the cultivated land on the right bank of the Fraser, from a fir tree marked "Indian Reserve" about 2 miles north of Bridge river, to another fir tree about 1 mile south of that river.
16. In response to paragraph 10, the Crown admits that the sketch found with O'Reilly's 1881 Minute of Decision indicates a trail with a dashed line extending from the village at the mouth of the Bridge River along the left bank of the river through the land allocated for IR1 to just past 13 Mile Creek. The Crown acknowledges that the Band calls this trail the St'át'imc Trail.
17. In response to paragraph 11, the Crown admits that O'Reilly wrote to the Superintendent General of Indian Affairs on February 23, 1882 to describe the allocations he made for the Bridge River Indians. The Crown admits that O'Reilly wrote to the Chief Commissioner of Lands and Works for BC (the "CCLW") on

March 28, 1882, enclosing his Minute of Decision and a sketch of the allocations he made for the Bridge River Indians.

18. In response to paragraph 12, the Crown admits that on May 1, 1886, the CCLW and O'Reilly signed the survey plan of the land allocated for IR1, stamped "Indian Affairs Survey Record No. BC 147" and labelled "Surveyed and Drawn by W. S. Jemmett 1884-1885", and labelled as "9,621 Ac.". The Crown admits that this plan indicates some of the trails that Jemmett recorded in his field books #123 and #124 during his survey. The Crown admits that this plan indicates portions of trails in approximately the same location as portions of the trail indicated with a dashed line in the sketch found with O'Reilly's 1881 Minute of Decision.
19. In response to paragraph 13, the Crown admits that from May 1886, when the CCLW approved the legal survey plan, Canada administered provisional IR1 in the context of BC's continuing retention of the administration and control of the land. Canada does not admit that since about 1886, Canada administered provisional IR1 as a "reserve" within the meaning of the *Indian Act*. Canada admits that in 1938, when BC transferred administration and control of the IR1 land to Canada by OIC 1036, then IR1 fell into the definition of "reserve" under the *Indian Act*, and then Canada administered IR1 as a "reserve" within the meaning of the *Indian Act*.
20. In response to paragraph 14, the Crown admits that the 1916 Final Report of the Royal Commission on Indian Affairs for the Province of British Columbia (the "Royal Commission"), confirmed provisional IR1 as "described in the Official Schedule of Indian Reserves, 1913, at Page 123 thereof...as now fixed and determined and shewn on the Official Plans of Survey, viz.,; 'No. 1 – Bridge River, 9,621.00 acres...' " The description of provisional IR1 in the Schedule of Indian Reserves, 1913 was "Lillooet district, on both banks of Bridge river from its confluence with Fraser river upstream."
21. In response to paragraph 15, the Crown admits that British Columbia Order-in-Council 911, dated July 26, 1923 and federal Order-in-Council 1924-1265 dated, July 19, 1924, approved and confirmed the 1916 Final Report of the Royal

Commission, as amended by W.E. Ditchburn and J.W. Clark “in so far as it covers the adjustments, readjustments or confirmation of the Reductions, Cut-offs and additions in respect of Indians Reserves proposed in the said report of the Royal Commission, as set out in the annexed schedules...” The Crown admits that provisional IR1 was listed in the schedules attached to BC OIC 911, dated July 26, 1923 and federal OIC 1924-1265, and described therein as “Lillooet District, on both banks of Bridge River, from its confluence with the Fraser River, upstream” and acreage is stated as 9,621.

Order in Council 1036

22. In response to paragraph 16, the Crown admits that by provincial Order-in-Council 1036, dated July 29, 1938 (“OIC 1036”) BC transferred administration and control of the IR1 land to Canada.
23. In response to paragraph 17, the Crown admits that the terms of OIC 1036 included:

“...that it shall at all times be lawful for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority, to resume any part of the said lands which it may be deemed necessary to resume for making roads, canals, bridges, towing paths, or other works of public utility or convenience; so, nevertheless that the lands so to be resumed shall not exceed one twentieth part of the whole of the lands aforesaid, and that no such resumption shall be made of any lands on which any buildings may have been erected, or which may be in use as gardens or otherwise for the more convenient occupation of any such buildings.

[...]

...that all travelled streets, roads, trails, and other highways existing over or through said lands at the date hereof shall be excepted from this grant.”

The rest of the statements in paragraph 17 are legal argument, not fact.

24. In response to paragraph 18, the Crown admits that page 66 of the schedule attached to OIC 1036 lists IR1 with its “Description” stated as “Lillooet District, on both banks of Bridge River, from its confluence with the Fraser River, upstream”, and IR1’s “Acreage” stated as 9,621. The Crown does not admit that OIC 1036 or the attached schedule lists the acreage as being “as surveyed and shown on Plan No. BC 147”.

The trail

25. In response to paragraph 19, the Crown admits that by 1865, gold prospecting was taking place in the Upper Bridge River valley, and that fluming and sluicing for gold was taking place on the Lower Bridge River about thirteen miles north of Lillooet. The Crown admits that by 1865, gold was discovered in the St'át'imc Nation's territory.
26. In response to paragraph 20, the Crown admits that the CCLW's Public Works report for 1899, under the heading "Trail, North Fork Bridge River", indicates that a pack bridge was built with two spans of 33 feet long. The Crown has no knowledge of whether the pack bridge was in provisional IR1. The Crown has no knowledge of whether in about 1899 BC constructed a trail through provisional IR1 and, if so, whether any part of it followed the alignment of any existing trail in order to provide miners with access to the gold mines in the Upper Bridge River valley. The Crown admits that the CCWL's Public Works report for 1901 indicates excavating and grading took place on the "Trail from Mouth Bridge River to North Fork". The Crown admits that a "Sketch Map of the Lillooet and Clinton Mining Divisions of BC", accompanies the Annual Report of the Minister of Mines for 1910, and that the map labels part of the right bank of the Lower Bridge River as "Indian Trail", and indicates a trail on the left bank that is labelled "Gov't Trail".
27. In response to paragraph 21, the Crown has no knowledge of whether in about 1899 BC sought or obtained the consent or approval of Canada or the Band to construct a trail through provisional IR1.

The wagon road

28. In response to paragraph 22, the Crown admits that in fiscal year 1914-15, BC did work to widen the "Bridge River to North Fork" road "from Michells property to the Antoine", and that BC Public Works described Mr. Michel's property as located 12 miles from the mouth of the Bridge River. The Crown admits that in fiscal year 1915-16, BC did maintenance work to "Bridge River Road", "North Fork Road", and "North Fork Trail". The Crown has no knowledge of whether any part of the

above work in fiscal years 1914-15 and 1915-16 was located within provisional IR1 and, if so, whether any part of the work followed the alignment of any existing trail. The Crown admits that, in fiscal year 1915-16, BC did maintenance work to the bridge at the mouth of the Bridge River within provisional IR1. The Crown admits that, in 1919, Public Works reported that there was eight people settled in and around the North Fork who used the road to the mouth of the Bridge River, one of whom had a wagon. The Crown admits that, in 1919, it was reported to the Minister of Public Works that a 20 mile road existed from the mouth of the Bridge River to the North Fork at a “width of a little over 8 feet.”

29. In response to paragraph 23, the Crown denies the assertion that in about 1914 and 1915 BC did not seek the consent or approval of Canada or the Band to construct a wagon road in provisional IR1. The Crown has no knowledge of whether BC obtained the consent or approval of Canada or the Band to construct a wagon road in provisional IR1.

The road

30. In response to paragraph 24, the Crown admits that the road from Moha (at the North Fork) to the mines in the Upper Bridge River valley was “completed and open for traffic October 15, 1955.” The Crown admits that the Minister of Highways report for fiscal year 1955-56 stated that the “work of widening” the road between Lillooet and Moha had begun “in order to improve travel to Bralorne”, and that approximately 8 miles were complete, with a “considerable amount of rock excavation at the Antoine Bluffs at Mile 18”. The Crown has no knowledge of whether any part of this work was within IR1.
31. In response to paragraph 25, the Crown admits that, by letter dated May 10, 1956, BC District Engineer Beaumont wrote to Indian Superintendent Meek (copy to the BC Right-of-Way Agent) regarding “Wm. Michel Ranch, Lillooet-Moha Road”, and stated that “[f]urther to our conversation”, Public Works “wishes to widen the existing road through Mr. Michel’s improved land and it would require taking an additional 0.64 acres according to the enclosed sketch”. BC Public Works included

their offer of compensation, and noted that they “would appreciate your early permission to enter this land if this compensation is approved.”

32. Further, in response to paragraph 26, the Crown denies the assertion that during the conversation between Superintendent Meek and District Engineer Beaumont regarding Public Works’ wish to widen the existing road through William and Thomas Michel’s property, that Superintendent Meek did not inquire as to the extent of Public Works’ planned road work through IR1. The Crown has no knowledge of whether, upon receiving Beaumont’s letter of May 10, 1956, Superintendent Meek or others from the Department of Indian Affairs then made further inquiries about the extent of BC’s planned road work through IR1, before the Band council passed a resolution on this matter on June 6, 1956. The rest of the statements in paragraph 26 are legal argument, not fact.
33. In response to paragraph 27, the Crown admits that on June 6, 1956 the council of the Band passed a resolution:
- “That the .64 acre requested by the Department of Highways on Bridge River I.R. No.1, on the Lillooet-Moha Road, is the property of William and Thomas Michel jointly and equally.
- That the purchase of the said .64 acre on I.R. No. 1 for the total sum of \$185.00 is approved, William and Thomas Michel to divide the proceeds equally.”
34. In response to paragraph 28, the Crown admits that, between September 8, 1959 and April 5, 1960, BC surveyor A. W. McWilliam surveyed the BC road right-of-way, and re-surveyed part of the boundary of IR1. The Crown admits that a notation on McWilliam’s survey plan indicated that the right-of-way contained 85.38 acres. The Crown admits that, by September 23, 1960, the Indian Commissioner for B.C. had received a copy of survey plan 50252.
35. In response to paragraph 29, the Crown admits that, after review of survey plan 50252 against the original location plan, Right-of-Way Agent (“RW Agent”) A.C. Brown determined that more land had been taken at William and Thomas Michel’s than originally estimated. By letter dated December 19, 1960, Brown wrote to F. A. Anfield, Indian Commissioner for BC, to inform him that the additional land

comprised 2.678 acres of unimproved land to be resumed under “the 1938 crown provincial transfer”, and .37 acres of improved land for which he offered a “supplementary settlement” of \$74 (at the rate of \$200 per acre).

36. In response to paragraph 30, the Crown admits that, on January 24, 1961, the council of the Band passed a resolution:

“That we, the Band Council of the Bridge River Band, agree to transfer land shown on Plan 50252 to the Provincial Department of Highways with the understanding that compensation at a rate of \$200.00 per acre will be paid for .64 acres of improved land.”

The rest of the statements in paragraph 30 are legal argument, not fact.

37. In response to paragraph 31, the Crown admits that, by Order-in-Council 1961-210 dated February 16, 1961, the Governor in Council, “on the recommendation of the Minister of Citizenship and Immigration”, and “pursuant to section 35 of the Indian Act” consented to “the taking of the said lands by the Province of British Columbia and to transfer administration and control thereof to Her Majesty in right of the Province of British Columbia” and the lands were described as “...all those portions of a right-of-way according to” Survey 50252, “said portions containing together by admeasurement eighty-five acres and thirty-eight hundredths of an acre, more or less”.
38. In response to paragraph 32, the Crown admits that in 1961, BC paid \$202 (\$128 + \$74) for 1.01 acres (.64 + .37) of improved lands that were included in the 85.38 acres transferred to BC by Order in Council 1961-210, and BC paid \$30 for two fruit trees, \$15 for raspberry canes, and \$12 for strawberry plants (totaling \$259). In addition, BC agreed to provide new fencing, one irrigation water overflow, and reasonable access. The Crown has no knowledge of whether the Band was ever previously compensated for any portion of the road right-of-way running through IR1 from Lillooet to the North Fork.
39. In response to paragraph 33, the Crown admits that, on May 31, 1961, the council of the Band passed a resolution:

“That the application of Department of Highways for an additional .37 acres of improved land from parcel located to William and Thomas Michell on Bridge River I.R. No. 1 is approved at a rate of \$200.00 per acre.

That application for an additional 2.678 acres of unimproved band land for road purposes, without compensation under Order-in-Council 1036, is hereby approved.”

The rest of the statements in paragraph 33 are legal argument, not fact.

V. Statements of Fact (R. 42(e))

Allocation of IR1

40. In September 1881, O’Reilly and surveyor A. Green travelled to the Bridge River community, where the mouth of the Bridge River flows into the Fraser River about five miles north of Lillooet.
41. O’Reilly reported that, rather than “define separately the numerous small patches under cultivation”, he allocated “the entire width of the Bridge river valley, from base to base of the mountains, an average of $\frac{3}{4}$ mile, for a distance of 13 $\frac{1}{2}$ miles”.
42. O’Reilly’s allocation of land for IR1 was set out in his Minute of Decision dated September 1, 1881.
43. From August 27, 1884 to September 23, 1884, Jemmett surveyed the boundaries of the land allocated for IR1. Jemmett’s field books indicate dotted lines for trails and includes references to “Trail to Bridge River Mines”, “strike trail”, “on trail”, “along trail”, and “leave trail”.
44. Jemmett plotted his survey plan in 1884-1885, and it includes some of the trails that he noted in his field books.
45. On May 1, 1886, the CCLW signed Jemmett’s survey plan to indicate the CCLW’s approval of the survey methods and the location of provisional IR1 on what were then still provincial Crown lands.

46. BC transferred administration and control of the land in IR1 to Canada, pursuant to BC Order-in-Council 1036, dated July 29, 1938. Upon this transfer, IR1 became a “reserve” under the *Indian Act*.

Trail

47. In 1865, A. Jamieson reported to Assistant Gold Commissioner A. C. Elliott, on mining activities in the Upper Bridge River valley. Jamieson noted that one way to reach this area was through a mountain pass, but that it was better to go by trail from Lillooet through the Lower Bridge River Valley, then through the Bridge River Canyon, and then through the Upper Bridge River valley. Jamieson noted that “[f]rom the mouth [of the Bridge River] to the North Fork a distance of about twenty (20) miles a good trail already exists”.
48. The CCLW’s Public Works report for the year ending December 31, 1898, indicates that it made “necessary repairs” on a portion of the trail on the Fraser River, “from Bridge River” along the right bank of the Fraser River for 3 miles in the direction of Fountain Point.
49. The Public Works report for the year ending December 31, 1900 includes a heading “Trail, West Side Fraser River”, and reports that they “[r]epaired covering, put in new braces and fixed approach to Bridge River bridge.”
50. The Public Works report for the year ending December 31, 1901, under the heading “Trail from Mouth Bridge River to North Fork”, reports that they excavated 25,275 feet and graded 13,750 feet at 2 ½ feet wide.
51. The Public Works report for the year ending June 30, 1902, under the heading “Trail west side of Fraser River”, reports “Cleaned out trail from near Lillooet to Bridge River Bridge.” Under the heading “Trail, Mouth of Bridge River to North Fork (15 miles)”, the report states “Cleared off rock and gravel slides and made general repairs from mouth of Bridge River to 9-Mile Creek. Cleared out gravel slides and loose rocks and made general repairs from 9-Mile Creek to North Fork.”

52. The Public Works report for the year ending June 30, 1903, under the heading “Trail, West Side of Fraser River (about 75 miles long)”, reports “Cleaned out loose rocks from Bridge River Bridge to High Bar.” Under the heading “Trail, Mouth of Bridge River to North Fork (15 miles long)”, it is reported that:

“This trail connects with the west side of the Fraser River Trail at Bridge River Bridge. All the mining supplies for the hydraulic mines at North Fork pass over it. The trail passes through an Indian Reserve for a distance of 14 miles. [...] Cleaned out gravel slides and made general repairs from Bridge River Bridge to North Fork. Cleaned out loose rocks from Bridge River Bridge to 14-Mile Creek.”

53. A “Sketch Map of the Lillooet and Clinton Mining Divisions of BC”, accompanies the Annual Report of the Minister of Mines for 1910. The map labels part of the right bank of the Lower Bridge River as “Indian Trail”, and indicates a trail on the left bank that is labelled “Gov’t Trail”.

Wagon road

54. By Gazette Notice published August 3, 1911, the BC Minister of Public Works gave notice that:

“...all public highways in unorganized districts, and all main trunk roads in organized districts are sixty-six feet wide, and have a width of thirty-three feet on each side of the mean straight center line of the travelled road.”

55. In January 1915, a Consulting Engineer reported to Road Superintendent James More that they had “about finished widening” the “Bridge River to North Fork” road “from Michells property to the Antoine”. The engineer’s machinery was in Lillooet, dismantled and ready to transport to camp for the next stage of work from “the Bridge to Michells”. Public Works described that “from the mouth of the River to Machells on the Bridge River Indian Reserve” was 12 miles.
56. The Public Works report for fiscal year 1914-15, under heading “North Fork Road”, lists 9 miles of work.
57. Sometime before March 1915, Road Superintendent More contacted Indian Agent Graham to request permission to construct a section of road in provisional IR1,

from near 9 Mile Point to Antoine Creek, a “distance of between 8 and 9 miles, where a Trail has been established for many years, and in use at present.” Graham advised More that his application must be submitted to the “Royal Indian Commission at Victoria”.

58. Section 8 of the Agreement establishing the Royal Commission, dated September 24, 1912, provided in part that:

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 railway purposes, or for any Dominion or Provincial or Municipal Public Work or purpose, 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.

59. In April 1915, Public Works advised Road Superintendent More that an application to the Royal Commission would require a tracing with the proposed route; that work could not start until the approval of the Royal Commission was received; but that “if...there is any urgency in connection with this matter you will doubtless be able to come to arrangements with Mr. Graham, so that you can proceed.”
60. The Royal Commission responded to “section 8” applications either by “Interim Report”, or by “resolution”, or by advising that the matter was not within the scope of their authority and should be referred back to the Department of Indian Affairs. The Royal Commission, by way of “Interim Reports”, did address a number of Public Works applications to establish and construct new roads through Indian Reserves.
61. In October 1915, residents of the towns of Lillooet and Bridge River stated that a wagon road “is now constructed” from Lillooet to North Fork, and what they wanted was a wagon road from the North Fork through the Bridge River Canyon to connect to the mines in the Upper Bridge River valley.
62. The Public Works report for fiscal year 1915-16, under the heading “Bridges”, lists \$70.75 on “Bridge River, mouth of”.

63. In April 1919, the Member of the Legislative Assembly for Lillooet, A. McDonald, wrote to Public Works to submit that the 20 miles of road between the mouth of the Bridge River to the North Fork should be widened from “a little over 8 feet” to a width of “at least 9 ½ feet.”
64. In July 1920, General Road Foreman James More reported to District Engineer G.C. MacKay that the “North Fork Road is 25 miles in length”, and the “first portion from the mouth of the River to Machells on the Bridge River Indian Reserve, 12 miles, is in fair condition”, but “from there to the forks of the river, 13 miles, it is almost blocked.” More reported that the road had been cleaned out that season, “but owing to the running gravel slides, it fills in after every wind or rain storm.” More estimated the cost of widening the road to 10 feet up to the north end of IR1. He also estimated the cost to widen the road to about 9 feet “from Machell’s to the Forks covering the worst portion of the road for running gravel and narrow places”.
65. In 1932, Indian Agent Strang wrote to the Secretary of Indian Affairs to report on the terms of proposed mining leases in relation to Mr. Michel’s farm at 7 Mile Creek, and in relation to the Michel Bench mining lease at 13 Mile Creek. Strang enclosed survey plans provided by the mining company, which indicated the location of a “wagon road”.
66. The BC Department of Lands “Pre-emptors map, Lillooet Sheet, 1938” indicated a “local road” from Lillooet to just past 7 Mile Creek, at which point a “trail” is then indicated up to the North Fork.
67. By provincial OIC 1036, dated July 29, 1938, BC transferred administration and control of the IR1 land to Canada. The terms of OIC 1036 included:

“...that it shall at all times be lawful for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority, to resume any part of the said lands which it may be deemed necessary to resume for making roads, canals, bridges, towing paths, or other works of public utility or convenience; so, nevertheless that the lands so to be resumed shall not exceed one twentieth part of the whole of the lands aforesaid, and that no such

resumption shall be made of any lands on which any buildings may have been erected, or which may be in use as gardens or otherwise for the more convenient occupation of any such buildings:

[...]

...that the Department of Indian Affairs shall through its proper officers be advised of any work contemplated under the preceding provisoes that plans of the location of such work shall be furnished for the information of the Department of Indian Affairs, and that a reasonable time shall be allowed for consideration of the said plans and for any necessary adjustments or arrangements in connection with the proposed work:

[...]

...that all travelled streets, roads, trails, and other highways existing over or through said lands at the date hereof shall be excepted from this grant.”

68. The 1943 Schedule of Indian Reserves lists Bridge River IR1, and under the heading “remarks”, it stated “Right of Way Bridge River Road (preliminary) 104.0.”

Road

69. By memo dated October 26, 1953, District Engineer Beaumont reported to the Chief Engineer that the existing road from Lillooet to the bridge over the North Fork river at Moha “is a narrow road (10 to 14’ wide)”. Beaumont provided an estimate for 23.4 miles of work from Lillooet up to the North Fork bridge at Moha.
70. By memo dated June 15, 1955, the Chief Engineer wrote to the Divisional Engineer to provide estimates for “minimum improvements” to “improve the standard” of the road from Lillooet to Moha.
71. The Highways report for fiscal year 1955-56, stated that the road from Moha on the North Fork to the mines in the Upper Bridge River valley was “completed and open for traffic October 15, 1955.” The Report also stated that the “work of widening” the road between Lillooet and Moha had begun “in order to improve travel to Bralorne”, and that approximately 8 miles were complete, with a “considerable amount of rock excavation at the Antoine Bluffs at Mile 18”.
72. By letter dated May 10, 1956, District Engineer Beaumont wrote to Superintendent Meek, copy to the RW Agent, that “[f]urther to our conversation”, Public Works “wishes to widen the existing road through Mr. Michel’s improved land and it

would require taking an additional 0.64 acres according to the enclosed sketch”. Public Works included their offer of compensation, and noted that they “would appreciate your early permission to enter this land if this compensation is approved.”

73. Beaumont’s letter of May 10, 1956 offered to pay \$200 an acre for .64 acre of the Michels’ improved land, \$30 for two fruit trees, \$15 for raspberry canes, and \$12 for strawberry plants, totaling \$185. In addition, Public Works would provide new fencing, one irrigation water overflow, and reasonable access from the property to the road.
74. On June 6, 1956, the council of the Band passed a resolution to accept the offer from Public Works:
- “That the .64 acre requested by the Department of Highways on Bridge River I.R. No.1, on the Lillooet-Moha Road, is the property of William and Thomas Michel jointly and equally.
- That the purchase of the said .64 acre on I.R. No. 1 for the total sum of \$185.00 is approved, William and Thomas Michel to divide the proceeds equally.”
75. By letter dated June 8, 1956, Superintendent Meek wrote to Beaumont to convey that the Band had approved the application, and that he would forward the necessary documents to Indian Affairs Branch Vancouver office “for their approval, together with your sketch”. Meek advised that “it appears in order for you to enter the land for the purposes of widening the road.”
76. By letter dated June 13, 1956, Indian Commissioner for BC Arneil, wrote to RW Agent L.J. Moore to say that Meek had sent him BC’s right-of-way application. Arneil noted to Moore that the sketch provided by Beaumont “is, of course, not satisfactory, and it will be necessary for you to eventually provide a legal plan of survey.”
77. RW Agent Moore responded to Arneil by letter dated June 18, 1956, noting that “this particular matter is one which was the subject of direct negotiation between

the District Engineer, Lillooet, and your Superintendent at Lytton.” Moore confirmed that “[a]s you are aware, our procedure entails the submission in the first instance of a Department location plan which is followed by a ground survey...”

78. On July 25, 1956, William and Thomas Michel agreed “to give the Department of Highways ... a right-of-way through our property...as shown on their plan...” at the rate of \$200 per acre for .64 acres.
79. By letter dated November 22, 1956, District Engineer Beaumont wrote to Superintendent Meek to request “the use as a detour, of the old road” on IR1 and IR1A “during such time as the existing public road is being repaired through the reserve.”
80. G. M. Downton (while surveying IR1A in 1925), drew two wagon roads in his field book #507, showing both roads running parallel with the Fraser River and into provisional IR1. He labelled one of them “old wagon road to Bridge River”.
81. The Highways report for fiscal year 1956-57, under the heading “Major Construction”, stated that the “Lillooet-Moha Road received extensive work with day-labour. Mile 0 to Mile 0.5 and Mile 3.7 to Mile 12.2 (10 miles) were widened and improved with completion of the rock excavation at Antoine Bluffs at Mile 18 and approaches for the Bridge River Bridge at Mile 4.” Under the heading “Statement as to Major Highway work completed or in progress”, it was reported that the work of “Reconstruction – widening” was commenced April 1956, and at fiscal year end March 31, 1957 the work was 100% complete.
82. In October 1957, Indian Commissioner Arneil wrote to RW Agent Moore to inquire as to when Indian Affairs could expect to receive the legal survey of the right-of-way “as I understand the road construction was completed some time ago.”
83. In December 1957, Highways District Superintendent C.S. Shaw wrote to Beaumont, Locations Branch, to relay that Superintendent Meek had called to convey Mr. Michel’s report that the road work had damaged a portion of his fence located “from the house towards the Moha” and that Highways had promised to

move his house “which is on the top of a big cut on the Moha Road.” A record of Superintendent Meek’s call also records a concern with “filling of irrigation ditch by graders at Antoine Creek”.

84. In fiscal year 1957-58, Highways built a new bridge at the mouth of the Bridge River.
85. By letter dated January 20, 1959, Indian Commissioner Arneil wrote to the RW Agent to enclose Beaumont’s May 10, 1956 letter “relating to the wishes of the Highways Department to widen the existing road on the above mentioned Indian Reserve which would require an additional land alienation of .64 acres”. Arneil expressed that he would appreciate receiving “the survey plan designating your requirements”, as well as the other consideration set out in Beaumont’s letter.
86. By inter-departmental correspondence dated January 25, 1959, District Engineer Dunn wrote to RW Agent Brown and noted that “the construction through this particular property was never completed and may not be for some time” and, as such, it would be “most undesirable” to do a legal survey.
87. By letter dated February 5, 1959, Indian Commissioner Arneil wrote to Indian Affairs Branch Ottawa that, in the circumstances “we have advised the Right-of-way Agent that survey may be deferred until such time as construction is completed.”
88. By letter dated February 26, 1959, Arneil wrote to RW Agent Brown to remind him that “Ottawa has authorized construction of the above mentioned road in view of the agreement that has been reached with the Indian Band Council, concerning, in particular, compensation offered. Approval, however, has been granted subject to the supply of satisfactory survey plans acceptable to the Surveyor General of Canada.”
89. In March 1959, Arneil wrote to the RW Agent to confirm receipt of \$185, and to remind him that the compensation could not be released to William and Thomas

Michel “pending transfer of land to the Province, which is only possible after receipt of acceptable survey plans.”

90. In April 1959, BC District Superintendent Blunden wrote to BC Land Surveyors McWilliam, Whyte & Searle to ask if they could undertake the work to survey “the existing right-of-way” of the “#163 North Fork Road Lillooet to Yalakom Hill”, and that the “length involved is some 20 miles”.
91. By letter dated May 7, 1959, Indian Commissioner Arneil wrote to the Indian Affairs Branch Ottawa, to report that the Locations Branch of Highways had advised that the survey of the highway right-of-way “Bridge River I.R. No. 1 – Lillooet to Moha Road” would “in all likelihood” be part of their survey program that year.
92. Sometime before May 29, 1959, McWilliam, Whyte & Searle contacted RW Agent Brown and the Kamloops District Superintendent M.G. Elston, and it was “decided that the road will be surveyed 66 ft. wide.”
93. The remaining work on the road through IR1 was completed in fiscal year 1959-60. The Highways report, under the heading “Report of the Director of Location” states “Road 163: Bridge River Indian Reserves Nos 1 and 1a (part) and Lands End Road (completion).”
94. By letter dated August 6, 1959, District Superintendent Blunden wrote to McWilliam, Whyte, Serle & Goble to “kindly take this letter as your authority to carry out a survey of #163 North Fork Road through I.R. #1 between Lillooet and Yalakom Hill and to prepare a plan indicating a right-of-way width of 66 feet.”
95. McWilliam began work on the legal survey of the road right-of-way on September 8, 1959.
96. By letter dated March 1, 1960, R. Thistlethwaite Surveyor General of Canada wrote to the head of the Reserves and Trusts Division, enclosing a tracing of a survey plan on which he had indicated areas of IR1 that lay to the north of the road right-

of-way and which might be exchanged with Public Works for other provincial land along the boundary of IR1. Thistlethwaite was of the view that an exchange would reduce the amount of work that McWilliam would have to do in determining the points where the road right-of-way intersected with the boundary of IR1.

Thistlethwaite noted that, from 7 Mile Creek to the northwest corner of IR1, a land exchange might occur and that it would favour BC by 24 acres.

97. By letter dated March 21, 1960, the Reserves and Trusts Division replied to the Surveyor General (copy to the Indian Commissioner for BC) to convey that it was felt that “we would have little to gain in exchanging lands with the Province”, and that negotiations around a land exchange would prolong the delay in receiving a final plan. Reserves and Trusts suggested that the Surveyor General advise Highways to submit the road survey and, following confirmation of the survey by the Surveyor General, “transfer will be made in the usual manner.”
98. McWilliam re-surveyed parts of the boundary of IR1, and recorded where it intersected with the right-of-way. McWilliam finished his field work on April 5, 1960.
99. In September 1960, the Reserves and Trusts Division in Ottawa asked Indian Commissioner Anfield for further information on the background of the 85.38 acre right-of-way in survey plan 50252. By letter dated December 30, 1960, Anfield conveyed to Ottawa that the highway right-of-way was known as the Lillooet to Moha road, but “never previously confirmed by a legal land survey.”
100. RW Agent Brown reviewed survey plan 50252, to check the actual amount of land taken at the Michels’, as compared to the original estimate on the location plan. By letter dated December 19, 1960, Brown wrote to Anfield, to inform him that additional land had been taken, and that it comprised 2.678 acres of unimproved land to be resumed under “the 1938 crown provincial transfer”, and 0.37 acres of improved land for which he offered a “supplementary settlement” of \$74 (at the rate of \$200 per acre).

101. By letter dated January 4, 1961, the Reserves and Trusts Division wrote to Anfield to convey that, before transferring control and administration of the road to BC, it would be “advisable to have a resolution of the Bridge River Band Council approving transfer without compensation other than the sum of \$185.00 paid for 0.64 acres.”
102. On January 24, 1961, the council of the Band passed a resolution:

“That we, the Band Council of the Bridge River Band, agree to transfer land shown on Plan 50252 to the Provincial Department of Highways with the understanding that compensation at a rate of \$200.00 per acre will be paid for .64 acres of improved land.”
103. By letter dated January 30, 1961, Meek wrote to the Indian Commissioner for BC with regard to RW Agent Brown’s calculation of additional land taken at the Michels’. Meek reported that, at the Band Council meeting on January 23, 1961, the Council decided to hold the matter in abeyance because the Band Council and Meek wanted to assure themselves as to whether or not the additional land was over and above the 85.38 acres shown in Plan 50252. As well, Council wanted to talk to Mr. Michel to confirm whether Brown was correct in his determination of how much of the additional land was improved.
104. By letter dated February 8, 1961, H.M. Jones, Indian Affairs Branch Director sent a memo to the Deputy Minister, attaching a submission for the purpose of obtaining an Order in Council transferring control and administration to BC of the 85.38 acres in the highway right-of-way running through IR1. Jones advised that payment of \$185 had been received for the improved land, and with respect to the un-improved land, that BC had “the right to resume” it under OIC 1036 “without payment of compensation”.
105. By Order-in-Council 1961-210 dated February 16, 1961, the Governor in Council, “on the recommendation of the Minister of Citizenship and Immigration”, and “pursuant to section 35 of the Indian Act” transferred to BC the administration and control of the 85.38 acres in the highway right-of-way.

“Whereas the Minister of Highways, Province of British Columbia, has applied for the lands hereinafter described, being a portion of Bridge River Indian Reserve number one in the said Province, for road purposes;

And Whereas the Council of the Bridge River Band of Indians, for whose use and benefit the said Reserve has been set apart, have by Resolution dated January 24, 1961, approved the application in consideration of the sum of One Hundred and Eighty-five Dollars (\$185) which has been paid by the Province;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Citizenship and Immigration, pursuant to section 35 of the Indian Act, is pleased hereby to consent to the taking of the said lands by the Province of British Columbia and to transfer administration and control thereof to Her Majesty in right of the Province of British Columbia.”

106. On May 31, 1961, the Council of the Band passed a resolution:

That the application of Department of Highways for an additional .37 acres of improved land from parcel located to William and Thomas Michell on Bridge River I.R. No. 1 is approved at a rate of \$200.00 per acre.

That application for an additional 2.678 acres of unimproved band land for road purposes, without compensation under Order-in-Council 1036, is hereby approved.”

107. In June 1961, Reserves and Trusts noted that a cheque had been requisitioned in favour of William and Thomas Michel for \$185, and would be sent to them care of Superintendent Meek.
108. By letter dated November 1, 1961, Indian Commissioner for BC J. V. Boys wrote to Indian Affairs Branch Ottawa, to confirm that the payment of \$74 was with respect to the calculation of additional improved land taken at the Michels’ based on survey plan 50252, and included in the 85.38 acres transferred by Order in Council 1961-201. Boys asked whether another OIC would be required to reflect that total compensation received was \$259 (\$185 + \$74).
109. By letter dated November 7, 1961, the Reserves and Trust Division confirmed that another OIC was not required. Rather, “Treasury will be asked to amend its records to show the total compensation was \$259”.

110. By requisition dated November 23, 1961, Indian Affairs requested that a cheque be made out in favour of “William and Thomas Michell” for \$74 and sent to them care of Meek.
111. In June 1962, BC Gold Commissioner Offin wrote to Meek in the context of a dispute about whether miners were trespassing on IR1 when they worked the bed of the Bridge River. Offin asserted that miners could plant posts in the highway right-of-way to mark their claims, on the basis that Highways had advised that the highway through IR1 was Provincial land “by right of construction or by right of easement or purchase of ownership...”
112. By letter dated July 26, 1963, Highways District Superintendent Steven wrote to the Regional Highway Engineer to state in regard to the roadwork, that:
- “Realignment of the road did erase 300 feet of an old abandoned ditch and cover 200 feet of a 50 year old log snake fence”; and
 - “The road is more than 300 feet from the old cabin mentioned in Mrs. Michel’s letter, and is serviced by an access road if necessary.”
113. By letter dated August 23, 1963, Mrs. Michel wrote to Superintendent Meek to clarify that the Michels had two properties on IR1; namely: the Antoine Creek property that straddled the creek, with a shanty on it, and the Applespring property at 7 Mile Creek, with the house. Mrs. Michel wrote that the roadwork had affected fencing and access at Applespring, and had destroyed fencing and an irrigation ditch at the Antoine Creek property south of the creek, and that the “grader continually fills” the irrigation ditch north of the creek.
114. In November 1963, Meek wrote to RW Agent Brown to ask if he could visit IR1 that winter to see Mr. Michel as he “is very concerned about the takeover of the road along the Bridge River Reserve, and particularly in respect to an old loghouse for which no compensation was paid.”

VI. Relief (R. 42(f))

115. The Crown seeks a dismissal of all the claims set out in the Declaration of Claim, except for those claims admitted under the heading “III Validity” (above).
116. If the Crown is liable, which is not admitted, then BC caused or contributed to the alleged acts or omissions and any losses arising therefrom, pursuant to section 20(1)(i) of the *Specific Claims Tribunal Act* (the "Act").
117. If the Crown is liable, which is not admitted, then pursuant to section 20(3) of the Act, the value of any benefit received by the Band in relation to the subject-matter of the specific claim brought forward to its current value in accordance with legal principles applied by the courts, shall be deducted from the amount of any compensation awarded by the Tribunal.
118. The Crown pleads and relies on section 20 of the Act.
119. Costs.
120. Such further and other relief as this Honourable Tribunal deems just.

Communication (R. 42(g))

Respondent's address for service:

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Attention: Peri Smith

Fax number address for service: (604) 666-2710

Email address for service: Peri.Smith@justice.gc.ca

Dated: March 26, 2021

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Amendment Dated: May 26, 2021

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