

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

PASQUA FIRST NATION

Claimant

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by the Minister of Crown-Indigenous Relations

Respondent

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

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 Ron Maurice, Ryan Lake,
Anjalika Rogers, and Geneviève Boulay
Maurice Law Barristers and Solicitors
602 12th Avenue SW, Suite 100
Calgary, AB T2R 1J3
Tel: 403-266-1201
Fax: 403-266-2701
Email: rmaurice@mauricelaw.com
rlake@mauricelaw.com
arogers@mauricelaw.com
gboulay@mauricelaw.com

OVERVIEW

1. His Majesty the King 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. This commitment exists within the context of litigation and beyond. Canada endeavours to embody these principles as it assists the Specific Claims Tribunal (“Tribunal”) in its task of adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. As this matter evolves and the historical record is assembled and analyzed, Canada will continue to consider all appropriate forms of resolution. Further, Canada recognizes the significant role treaty-making has played in building Canada and the contemporary importance of treaties as foundations for continuing progress toward reconciliation.
3. This claim pertains to Treaty 4, or the Qu’Appelle Treaty, which was signed on September 15, 1874, and makes provision for the annual payment of a specified sum of money to each beneficiary under the treaty, commonly referred to as the Annuity Payment. The Annuity Payment in Treaty 4 is twenty-five dollars (\$25) to each Chief, fifteen dollars (\$15) to each Headman (Councillor) (not exceeding four in each band), and five dollars (\$5) to every other treaty beneficiary.
4. Canada recognizes an ongoing legal obligation to make Annuity Payments to its treaty partners in perpetuity, including to Pasqua First Nation as a signatory to Treaty 4. Canada acknowledges the Treaty 4 right to the Annuity Payments is recognized and affirmed by section 35 of the *Constitution Act, 1982*. Canada values its ongoing dialogue with First Nations on the interpretation of agreements like Treaty 4, and the role of these agreements in the ongoing relationship between treaty First Nations and the Crown.
5. The Treaty 4 annuity obligation should be considered in the greater context of the treaty relationship, including the social policy measures that have benefited First Nations. The Treaty 4 annuity obligation is financial consideration provided by Canada over an infinite period of time, rather than as a lump sum. In

accordance with the words of the Treaty, the annuities obligation is confined to the specific amounts set out in the text of Treaty 4 payable in Canadian dollars. Canada is not under a duty or obligation to adjust, index for inflation, or otherwise “modernize” the Annuity Payments. The parties to the Treaty intended that the annuity obligation would ensure the provision of the fixed payment specified in the text of Treaty 4. Canada has accordingly paid the specific unadjusted amounts set out in Treaty 4 from the date of Treaty adhesion.

6. In this Response, Canada periodically uses terminology now recognized as antiquated. Canada does so only when required for legal accuracy or when referring to, or quoting from, historical sources.

I. Status of Claim (Rule 42(a))

7. Canada admits Pasqua First Nation is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“SCTA”), as pleaded in paragraph 1 of the Declaration of Claim (“Claim”).
8. Canada admits paragraphs 3 and 4 of the Claim including that:
 - a. Pasqua First Nation submitted a claim to the Minister of Crown-Indigenous Relations on March 20, 2022 (the “Claim Submission”), which asserted breaches of fiduciary and other obligations resulting from Canada’s failure to index annuities paid under Treaty 4; and
 - b. by letter dated November 30, 2022, Canada advised Chief Peigan of Pasqua First Nation that its Claim Submission met the minimum standard to be filed with the Minister and that the Claim Submission was filed with the Minister on September 20, 2022.
9. Canada asserts settlement privilege over the communications referenced in paragraphs 5 and 6 of the Claim.
10. In February 2025, Canada brought an application to strike Pasqua First Nation’s Claim on the basis that the Minister of Crown-Indigenous Relations had not made a decision on whether to negotiate the Claim and three years had not elapsed

since Pasqua First Nation's Claim was filed with the Minister on September 20, 2022. Canada disputed that Crown Indigenous Relations and Northern Affairs' December 2023 and April 2024 correspondence to Pasqua First Nation were tantamount to a rejection of the Claim for negotiation as alleged in paragraph 6 of the Declaration of Claim. Canada asserted that the Claim failed to meet the conditions to be filed with the Tribunal as set out in subsection 16(1) of the *SCTA*.

11. On July 24, 2025, the Tribunal dismissed Canada's application to strike the Claim. The Tribunal determined that the April 2024 letter was tantamount to a decision not to negotiate Pasqua First Nation's specific claim and that the condition to filing with the Tribunal in paragraph 16(1)(a) of the *SCTA* was met.
12. On December 23, 2024, Pasqua First Nation commenced a proposed class action in the Saskatchewan Court of King's Bench (SKKB Action) in which Pasqua First Nation is a proposed representative plaintiff.¹ The SKKB Action is based on the same or substantially the same facts of this Claim, relates to the same assets as in this Claim, and could result in a decision irreconcilable with a Tribunal decision of this Claim.
13. At the date of this Response, Pasqua First Nation is actively proceeding with the SKKB Action. Pasqua First Nation has filed an application for certification of the SKKB Action and the date for the certification hearing has been set for September 8 to 10, 2026.
14. On February 7, 2025, Pasqua First Nation advised the Tribunal and Canada that if Canada's application to strike the Claim were dismissed, Pasqua First Nation would discontinue the SKKB Action.

¹ *Little Black Bear First Nation and Pasqua First Nation, and on behalf of all Treaty 4 First Nations, and Chief Clarence Bellegarde, on his own behalf and on behalf of all members of the Little Black Bear First Nation and on behalf of all members of Treaty 4 First Nations, Chief Matthew T. Peigan, on his own behalf and on behalf of all members of the Pasqua First Nation and on behalf of all members of Treaty 4 First Nations v Attorney General of Canada*, Saskatchewan Court of King's Bench Docket: RG-20892-2024, as amended.

15. At the date of this Response, Pasqua First Nation has not discontinued or immediately sought adjournment of the SKKB Action and continues to take steps in that proceeding.
16. In its endorsements of January 9 and 30, 2025, the Tribunal directed Canada to limit the issues in its application to strike to those related to the Tribunal's jurisdiction under subsection 16(1) of the *SCTA* to facilitate the timely determination of the application. Considering this direction, Canada retains the right to bring a future application under sections 14, 15, 17, or 37 of the *SCTA*.

II. Canada's Position with Respect to Validity of the Claim (Rules 42(b) & (c))

17. In response to paragraph 8 of the Claim, Canada denies that all the claims asserted by Pasqua First Nation are properly grounded under subsection 14(1) of the *SCTA*. In response to paragraphs 9 and 41 of the Claim, Canada admits the claim in these paragraphs is properly grounded under paragraphs 14(1)(a) and 14(1)(c) of the *SCTA* on the basis that Treaty 4 Annuity Payments constitute "other assets" under those paragraphs. Canada denies that the facts as plead, or at all, establish a valid claim under the *SCTA*. In response to paragraphs 11 and 42 of the Claim, Canada says the claims in the alternative are not based on any of the enumerated grounds in subsection 14(1) of the *SCTA* and are therefore outside the jurisdiction of the Tribunal.
18. In response to paragraph 10 and in further response to paragraph 11 of the Claim, Canada says Pasqua First Nation is barred from claiming compensation for annuities paid within the 15 years preceding September 20, 2022, under paragraph 15(1)(a) of the *SCTA*.
19. As of the date of this Response, there are several collective actions related to the indexation or augmentation of annuities under Treaty 4, based on substantially the same facts asserted in the Claim, wherein Pasqua First Nation or its members are part of, or could be part of, the proposed class of represented plaintiffs.²

² *Chief Nepinak and Chief Bonny Lynn Acoose v His Majesty the King*, Federal Court Docket: T-199-24; *Chief Murray Clearsky v Attorney General of Canada*, Manitoba Court of King's Bench Docket:

Canada reserves the right to make all representations and submissions regarding the application of subsection 15(3) of the *SCTA* if a class action is certified or a representative action on behalf of all beneficiaries of Treaty 4, including Pasqua First Nation or its members, proceeds concurrently with this Claim.

20. Canada is not required by Treaty 4, any fiduciary duty, the honour of the Crown, or any legal or equitable obligation to discharge its Annuity Payment obligations in the manner asserted by Pasqua First Nation. Canada states that the breaches asserted by Pasqua First Nation in its Declaration of Claim (as described in paragraphs 9 to 11 and 41 to 53 inclusively) did not occur. Canada does not have a legal duty to adjust its Annuity Payment obligations under Treaty 4 based on purchasing power, comparative value of monetary amounts, or any form of indexation or augmentation. Canada did not have any fiduciary or other equitable or honourable obligation to negotiate a clause providing for the indexation or augmentation of treaty annuities over time, nor can such an assertion ground a claim filed with the Tribunal under subsection 14(1) of the *SCTA*.
21. In further response to paragraphs 41 to 48 of the Claim, Treaty 4 is a *sui generis* agreement, which was solemnly entered into between the Crown and signatories or adherents with the intention of having legal effect. Pasqua First Nation's right to Annuity Payments is defined entirely in Treaty 4. The amount and timing of the Annuity Payments was a specific negotiated term of Treaty 4 and reflects the common intention of the Treaty 4 partners. The rights set out in Treaty 4, including the right to Annuity Payments, are recognized and affirmed under section 35 of the *Constitution Act, 1982*. However, the right to a Annuity Payment does not include a right to augmentation as Pasqua First Nation asserts. Treaty 4 is silent as to inflation and does not include an augmentation clause of any kind.

CI 24-01-44854; *Little Black Bear First Nation and Pasqua First Nation, and on behalf of all Treaty 4 First Nations, and Chief Clarence Bellegarde, on his own behalf and on behalf of all members of the Little Black Bear First Nation and on behalf of all members of Treaty 4 First Nations, Chief Matthew T. Peigan, on his own behalf and on behalf of all members of the Pasqua First Nation and on behalf of all members of Treaty 4 First Nations v Attorney General of Canada*, Saskatchewan Court of King's Bench Docket: RG-20892-2024, as amended.

22. In further response to paragraphs 42, 44, and 49 to 53 of the Claim, Canada acknowledges that although the honour of the Crown governs treaty implementation and guides all interactions with First Nation peoples, the honour of the Crown does not create a legal obligation in itself and does not give rise to the performance of specific obligations in the circumstances of this case. Canada further acknowledges that the relationship between the Crown and First Nation signatories or adherents of Treaty 4, including Pasqua First Nation, is a fiduciary one, and in certain circumstances the relationship may give rise to fiduciary obligations. However, Canada does not owe such obligations to Treaty 4 beneficiaries in the circumstances of this case. Canada has not undertaken discretionary control over any specific, cognizable, and communal interest of Pasqua First Nation with respect to Annuity Payments, which is a treaty right that arises solely from the Crown's executive treaty-making function.
23. In further response to paragraphs 44 to 53 of the Claim, the honour of the Crown requires Canada to take a broad and purposive approach to the interpretation of Treaty 4, and to act in good faith, with diligence, integrity, and fair dealing when implementing the terms of the Treaty. Canada's interpretation and implementation of the Treaty 4 annuity provision is consistent with the honour of the Crown. Since Treaty 4 was executed, Canada has fulfilled its obligations to Pasqua First Nation under the Treaty 4 annuity provision.

III. Canada's Position with Respect to Assertions of Fact

24. In response to paragraph 12 of the Claim, Canada admits that on June 23, 1870, the *Rupert's Land and North-Western Territory Order* admitted Rupert's Land and the North-Western Territory to the Dominion of Canada and states that Rupert's Land was concurrently transferred to the Dominion of Canada from the United Kingdom ("Rupert's Land Transfer"). The admission and transfer were subject to certain conditions including the payment of £300,000 by Canada to the Bank of England to the credit of the Hudson's Bay Company when Rupert's Land was transferred to the Dominion of Canada.

25. In response to paragraph 13 of the Claim, Canada acknowledges that expansion into the North-West Territories presented challenges and disrupted the traditional lifestyle of First Nations occupying that territory. Canada acknowledges the treaty process after Confederation was driven by a desire by Canada to open up the west for settlement, immigration, and trade, and to obtain peace with Indigenous nations inhabiting the territory. Canada acknowledges that the Crown-Indigenous treaty process typically involved taking surrenders of First Nation lands in consideration for various one-time and perpetual benefits to the First Nation treaty signatories or adherents.
26. In response to paragraph 14 of the Claim, Canada admits that between 1871 and 1921, the Crown entered into Treaties 1 through 11 (collectively the “Numbered Treaties”). Canada further acknowledges that one of the purposes of the Numbered Treaties included the Crown’s intention to open up the west for settlement, immigration, trade and other purposes. Canada also acknowledges that Treaties 2, 4, 5, 6, 8 and 10 cover the area that is now known as Saskatchewan.
27. In further response to paragraph 14 and in response to paragraph 16 of the Claim, Canada admits the Numbered Treaties provide for several specific and enforceable benefits to signatory First Nations in exchange for their consent to surrender their lands and open up the area covered by the treaties to settlement, immigration, and trade. With respect to Treaty 4 specifically, these promises included the provision of annuities, in perpetuity, of five dollars (\$5) per person per year for each member of a signatory or adherent First Nation. The parties to Treaty 4 intended Annuity Payments to be confined to the specific amounts in the text of Treaty 4. Other benefits under Treaty 4 included, among other things, the payment of an initial present, the provision of agricultural benefits, and the provision of reserve land entitlements, including the promise to set apart land for the exclusive use and benefit of Treaty 4 signatories or adherents.
28. In response to paragraph 15 of the Claim, Canada does not accept Pasqua First Nation’s characterization of the Numbered Treaty negotiations as being generally “fraught with conflict”. Canada acknowledges the Rupert’s Land Transfer gave

rise to questions and grievances by some Indigenous persons inhabiting what had been Rupert's Land and the North-Western Territory. Canada further acknowledges that during the negotiation of Treaty 4, Chief Pasqua or "Pisqua" expressed that the moneys paid to the Hudson's Bay Company for the Rupert's Land Transfer should have been paid to First Nations.

29. In response to paragraph 17 of the Claim, Canada says that treaties negotiated in proximate time periods and regions were similar in form, scope, and content. However, Canada denies that it intended to establish or established a clear set of uniform treaty terms during its long history of treaty-making with Indigenous nations. Canada says the terms of each Crown-Indigenous treaty were ultimately informed by the individual circumstances of the treaty signings and the objectives of the parties at the time of negotiation and entering into treaty.
30. In response to paragraph 18 of the Claim, Canada says the perpetual nature of the opening-up of land for settlement called for a reciprocal commitment from the Crown, which included the payment of annuities. Beginning in 1818, the Crown changed the compensation model for land surrenders and began paying perpetual annuities rather than large one-time distributions or lump sum payments to signatory First Nations.
31. In further response to paragraph 18 of the Claim, Canada acknowledges that shortly after an uprising against the British by various First Nations in 1763 and the conclusion of the Seven Years War in 1760, the British Crown issued the *Royal Proclamation, 1763*, (GB), 3 Geo 3 (reproduced in RSC 1985, App II, No 1) (the "*Royal Proclamation*"). The *Royal Proclamation* addressed a number of matters, including the British Crown's policy towards Indigenous peoples regarding land. Through that policy, the British Crown declared its intention to observe the common law right of Indigenous peoples to their lands and to refrain from alienating those lands absent consent. With respect to lands located outside the provinces of Quebec (which then included present day Quebec and much of southern Ontario), Nova Scotia, St. John's Island (present day Prince Edward Island), and Newfoundland, the Hudson's Bay Company territories and the thirteen American colonies, the policy enunciated in the *Royal Proclamation*

forbade the purchase of and settlement on those lands. With respect to lands within the aforesaid provinces and colonies, but not the Hudson's Bay Company territories, the policy forbade settlers from obtaining lands directly from Indigenous peoples and established a procedure for such purchases should Indigenous peoples desire to sell lands. Canada acknowledges that the *Royal Proclamation* stated the principle that an Indigenous interest in land is inalienable except upon surrender to the Crown.

32. In response to paragraph 19 of the Claim, Canada admits that:
 - a. on July 18, 1817, the Earl of Selkirk entered into treaty with the "Chippeway or Saulteaux Nation" and the "Killistine or Cree Nation" for the surrender to the Crown of lands adjacent to the "Red River" and "Ossiniboine River". Canada further acknowledges that in consideration for the surrender, the "Earl, his heirs and successors, or their agents" agreed to "annually pay... the present or quit rent consisting of one hundred pounds weight of good and merchantable tobacco..." to each First Nation. The Selkirk Treaty was later supplanted by Treaty 1;
 - b. on October 17, 1818, William Claus, Deputy Superintendent General of Indian Affairs (DSGIA Claus), entered into the Lake Simcoe-Nottawasaga Treaty No. 18 with the "Principal men of the Chippewa Nation of Indians..." for the surrender to the Crown of a tract of land containing approximately 1,592,000 acres in exchange for "the yearly sum of twelve hundred pounds, Province currency, in goods at the Montreal price..." paid annually in full consideration for the surrender;
 - c. on October 28, 1818, DSGIA Claus entered into the Ajetance Treaty No. 19 with the "Principal men of the Mississague Nation of Indians inhabiting the River Credit, Twelve and Sixteen Mile Creeks, on the north shore of Lake Ontario..." for the surrender to the Crown of a tract of land containing approximately 648,000

acres in exchange for the “yearly sum of five hundred and twenty-two pounds ten shillings Province currency in goods at the Montreal price...” paid annually in full consideration for the surrender; and

- d. on November 5, 1818, DSGIA Claus entered into the Rice Lake Treaty No. 20 with the “Principal Men of the Chippewa Nation of Indians...” for the surrender to the Crown of a tract of land containing approximately 1,951,000 acres in exchange for the “yearly sum of the seven hundred and forty pounds Province currency in goods at the Monreal price...” paid annually in full consideration for the surrender.

- 33. In response to paragraph 20 of the Declaration of Claim, Canada admits the treaties negotiated by the Crown and First Nations in Upper Canada between 1818 and 1836 provided for the payment of annuities in-kind rather than in cash. At this time, Canada does not have knowledge about the nature of the goods or merchandise received by First Nations pursuant to their in-kind annuities between 1818 and 1836, including whether all the goods purchased were essential to the recipient First Nation’s survival or to sustaining their livelihood.
- 34. In response to paragraph 21 of the Claim, Canada admits that in January 1850, William Robinson was appointed as Treaty Commissioner and was tasked with negotiating land cession agreements with the Huron and Superior Anishinaabe for lands north of Lakes Superior and Erie. During the negotiations, Robinson offered the full amount available to him under his mandate: £4000 in cash and a perpetual annuity of £1000 to be divided between the Superior and Huron First Nations. On September 7, 1850, the Robinson-Superior Treaty was executed, and the subject lands were surrendered to the Crown in consideration for “two thousand pounds of good and lawful money of Upper Canada... and for the further perpetual annuity of five hundred pounds...” On September 9, 1850, the Robinson-Huron Treaty was executed, and the subject lands were surrendered to the Crown in consideration for “two thousand pounds of good and lawful money

of Upper Canada... and for the further perpetual annuity of six hundred pounds of like money..." (collectively the "Robinson Treaties").

35. In further response to paragraph 21 of the Declaration of Claim, Canada admits the Robinson Treaties contain augmentation clauses, which provide for an increase of the perpetual Annuity Payments under certain conditions. The augmentation clause in the Robinson-Superior Treaty reads:

... The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all Her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided, further, that the number of Indians entitled to the benefit of this Treaty shall amount to two-thirds of their present number (which is twelve hundred and forty), to entitle them to claim the full benefit thereof, and should their numbers at any future period not amount to two-thirds of twelve hundred and forty, the annuity shall be diminished in proportion to their actual numbers.

36. In response to paragraph 22 of the Declaration of Claim, Canada admits that the first and only increase to the perpetual annuities paid under the Robinson Treaties was made in 1875. In 1850, the per person annuity was equivalent to about \$1.70 under the Robinson-Huron Treaty, and \$1.60 under the Robinson-Superior Treaty. In 1875, the per person annuities under both treaties were increased to \$4 (£1). Canada further admits the Chiefs of the Superior and Huron First Nations successfully petitioned the government to pay annuity arrears for the period of 1850 to 1874 to recognize that the economic conditions for increasing the annuity had existed before the 1875 increase. The Crown began paying arrears to the beneficiaries of the Robinson Treaties in 1903.
37. In response to paragraph 23 of the Claim, Canada admits that the Numbered Treaties do not contain an augmentation clause equivalent to those in the

Robinson Treaties. Canada denies that the Crown had any necessary or honourable obligation to include a similar provision for the augmentation of treaty annuities in subsequent treaties.

38. In further response to paragraph 23, Canada says the augmentation clauses in the Robinson Treaties are terms that were negotiated because of the unique circumstances existing at the time of those respective treaties. The funds available to Robinson were modest and could not support the standard \$10 (£2.10) per person annuity provided under the other contemporaneous treaties negotiated between 1818 to 1850. Robinson had limited access to funds for treaty because the provincial government viewed the economic prospects of the subject lands as bleak, and because Upper Canada was in a financial crisis and could not support a \$10 per person annuity. Because of these circumstances, Robinson negotiated a lower annuity along with the promise to increase the annuity if the Crown received revenues from the territory that would permit it to do so without incurring a loss.
39. In response to paragraph 24 of the Declaration of Claim, Canada admits the provision of annuities was an important feature of the Numbered Treaties.
40. In response to paragraph 25 of the Claim, Canada admits that Treaty 1, the Stone Fort (or Lower Fort Garry) Treaty, and Treaty 2, the Manitoba Post Treaty, which collectively secured the surrender of lands in what is now southern Manitoba, were the first treaties negotiated following Confederation on July 1, 1867. Canada further admits that Wemyss M. Simpson, Indian Commissioner, and Adams G. Archibald, Lieutenant-Governor of Manitoba and the North-West Territories, negotiated the terms of the treaties on behalf of the Crown.
41. In response to paragraph 26 of the Claim, Canada says that Joseph Howe, Secretary of State for the Provinces, included a copy of the Robinson-Superior Treaty with his instructions to Commissioner Simpson prior to the negotiations for Treaties 1 and 2. Canada states that a copy of the Robinson-Superior Treaty was provided to the Treaty Commissioners for information only.

42. In further response to paragraph 26 of the Claim, Canada admits Lieutenant-Governor Archibald expressed at the negotiations of Treaty 1 that the Indigenous peoples assembled would be treated with in a similar manner to the Indigenous peoples who had previously entered treaties with the Crown in the East. Canada denies there was any explicit promise made that Canada would enter treaties with the Indigenous peoples at Stone Fort on identical terms and conditions as the Anishinaabe of the Upper Great Lakes region under the Robinson Treaties.
43. In response to paragraph 27 of the Claim, Canada says that Treaty 1 was signed on August 3, 1871, and was ratified by the Governor General in Council on September 12, 1871. Canada admits that, in addition to other promises made, Treaty 1 as recorded in English provides:

... Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the district above described, distributing them in families, and shall in every year ensuing the date hereof, at some period during the month of July in each year, to be duly notified to the Indians and at or near their respective reserves, pay to each Indian family of five persons the sum of fifteen dollars Canadian currency, or in like proportion for a larger or smaller family, such payment to be made in such articles as the Indians shall require of blankets, clothing, prints (assorted colours), twine or traps, at the current cost price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interests of Her Indian people, in cash.

44. In further response to paragraph 27 of the Claim, Canada says that Treaty 2 was signed on August 21, 1871, and was ratified by the Governor General in Council on November 25, 1871. Canada further says that, in addition to other promises made, Treaty 2 as recorded in English provides:

... Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period during the month of August in each year to be duly notified to the Indians, and at or near their respective reserves, pay to each Indian family of five persons the sum of fifteen dollars, Canadian currency, or in like proportion for a larger or

smaller family, such payment to be made in such articles as the Indians shall require of blankets, clothing, prints (assorted colours), twine or traps, at the current cash price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interest of Her Indian people, in cash.

45. In further response to paragraphs 19 and 27 and in response to paragraph 28 of the Declaration of Claim, Canada acknowledges that the reference in Treaties 1 and 2 to the payment of annuities in-kind has similarities to the annuity provisions in the treaties entered into by the British Crown and First Nations in Upper Canada between 1818 and 1836. Canada does not currently have knowledge as to whether from time to time, the Crown paid all or part of the annuities under Treaties 1 or 2 in-kind. Canada admits the purchasing power of the annuities has decreased since the dates of treaty. Canada denies that reference to the payment of annuities in-kind gives rise to an inherent treaty promise to increase the Annuity Payments to maintain purchasing power. The reference to the Montreal cost or cash price in Treaties 1 and 2 and the Upper Canada Treaties is recognition of the fact that there was a wide discrepancy between what the Hudson's Bay Company posts could charge for goods in the isolated post areas and the prices in settled districts such as Montreal or Toronto. The reference was not a means of anticipating and incorporating the future cost of such goods, but rather a mechanism for locking in the historical (contemporaneous) cost at lower, or wholesale, prices.
46. In response to paragraph 29 of the Claim, Canada admits Treaty 3, or the North-West Angle Treaty, was signed on October 3, 1873. Canada admits negotiations between the Crown and signatory First Nations resulted in a per capita annuity of \$5, which was higher than the per capita annuity of \$3 agreed to in Treaties 1 and 2. Canada acknowledges that the Annuity Payment was an important part of Treaty 3 but does not admit Annuity Payments in and of themselves were seen, or intended as, a means to secure the future livelihood of the collective. Canada states that, as with other treaties, the Annuity Payment was only one of several benefits provided, within treaty and otherwise, in consideration for the surrender of subject lands and to further the reconciliation of the interests of the First Nations with those of the Crown and new settlers.

47. In response to paragraph 30 of the Declaration of Claim, Canada says this paragraph does not contain assertions of material fact to admit or deny.
48. In response to paragraph 31 of the Claim, Canada admits that at the time Treaty 4 was negotiated, Chief Pasqua and his band lived near Leech Lake, in what is now the province of Saskatchewan. Canada currently does not have knowledge of Pasqua First Nation's specific methods of livelihood prior to Pasqua First Nation entering into Treaty 4.
49. In response to paragraph 32 of the Claim, Canada acknowledges that the Rupert's Land Transfer gave rise to questions and grievances by some Indigenous persons and nations inhabiting what had been Rupert's Land and the North-Western Territory. Canada states that on or around April 13, 1871, prior to the negotiation of Treaty 1, a delegation of Plains Cree Chiefs, including Chief Sweet Grass, attended at Edmonton House to meet with William Joseph Christie, then Chief Factor of the Hudson's Bay Company Saskatchewan District, to ascertain whether their lands had been sold and what the intention of the Canadian Government was in relation to them, and to petition for support from the Crown. During this meeting, Commissioner Christie recorded messages from the chiefs, including the quoted message from Chief Sweet Grass in this paragraph, and conveyed the messages to Lieutenant-Governor Archibald in Fort Garry.
50. In response to paragraph 33 of the Declaration of Claim, Canada says the treaty process after Confederation was driven by a desire by Canada to open up the West for settlement and to obtain peace with the Indigenous nations inhabiting the territory. Canada denies that the North-West Council provided Alexander Morris, then Lieutenant-Governor of Manitoba and the North-West Territories, with the mandate to negotiate the terms of Treaty 4 on September 8, 1873. Canada says Lieutenant-Governor Morris did not receive instructions to proceed with making a treaty with First Nations in the Qu'Appelle region until around the spring of 1874.
51. In response to paragraph 34 of the Claim, Canada admits that in September 1874, Canada sent a delegation to Fort Qu'Appelle to conduct negotiations on behalf

of the Crown with First Nations for Treaty 4. Canada admits the delegation was accompanied by militia but does not currently have knowledge as to the number of militia gathered for the treaty negotiations or the effect of their presence among signatory First Nations. Canada denies the characterization of the negotiations as “protracted and fraught with conflict”. The Crown engaged with the gathered First Nations with good intentions and encouraged the spokespersons of the assembled First Nations to speak their minds freely during the negotiations. Canada admits that during the negotiation of Treaty 4, Chief Pasqua or “Pisqua” expressed that the moneys paid to the Hudson’s Bay Company for the Rupert’s Land Transfer should have been paid to First Nations. Canada has no knowledge of how this statement impacted the negotiations.

52. In response to paragraph 35 of the Claim, Canada acknowledges that the Annuity Payment was an important part of Treaty 4. However, Canada does not admit that the Annuity Payments in and of themselves were for the purpose of safeguarding the First Nations signatories’ livelihoods, including for future generations. Canada states that the Annuity Payment was only one of several benefits provided, within treaty and otherwise, in consideration for the surrender of subject lands and to further the reconciliation of the interests of the First Nation signatories to Treaty 4 and with those of the Crown and new settlers. The specific phrases quoted by Pasqua First Nation in paragraph 35 are evidence, but Canada admits those words were spoken during the negotiation of Treaty 4.
53. In response to paragraph 36 of the Claim, Canada admits Chief Pasqua entered into Treaty 4 on behalf of his band on September 15, 1874, along with the other signatory First Nations. Canada further admits that Treaty 4 was entered into on behalf of Her Majesty the Queen in right of Canada by Lieutenant-Governor Morris, Minister Laird, and Commissioner Christie. Canada acknowledges the Annuity Payment was an important part of Treaty 4 but does not agree with the Claimant’s emphasis on the promise to provide Annuity Payments as a promise to support the future livelihood of signatory First Nations in and of itself. The Governor General in Council ratified Treaty 4 on November 4, 1874.

54. In response to paragraphs 37 and 38 of the Claim, Canada admits that in August and September 1875, Commissioner Christie and M. G. Dickieson of the Department of the Interior attended at Fort Ellice and Qu'Appelle to make the payments of the annuities pursuant to the terms of Treaty 4, and to take adhesions of other First Nations that did not take treaty the previous year. Canada admits that from 1875 to the present, it has made Annuity Payments for Pasqua First Nation's council and members. At this time, Canada does not have knowledge of whether, from time to time, Canada paid all or part of the annuities owing under Treaty 4 to Pasqua First Nation collectively or to its members individually.
55. In response to paragraphs 39 and 40 of the Claim, Canada admits the purchasing power of the Annuity Payments has decreased since the Crown and signatory First Nations executed Treaty 4 on September 15, 1874, but denies that they have been rendered meaningless. Canada admits that Annuity Payments under Treaty 4 have not been augmented, increased, or indexed since the date of Treaty 4 execution.
56. In response to paragraph 55 of the Claim, compensation is not owed to Pasqua First Nation, as Canada upheld any legal obligations it may have had to Pasqua First Nation in the circumstances of the facts giving rise to this Claim. In the event the Tribunal finds compensation is owed, Canada states that any compensation must be assessed in accordance with prevailing legal principles and section 20 of the *SCTA*.

IV. Canada's Statements of Fact

57. Treaty 4, or the Qu'Appelle Treaty, entered into among the signatories on September 15, 1874, represents solemn and sacred promises between Canada and signatory or adherent First Nations, including Pasqua First Nation, and perpetuates nation-to-nation relationships. Canada and the Treaty 4 First Nations' relationships are guided by the terms of Treaty 4, taken as a whole, and the annuity provision should be considered in the context of the entirety of Treaty 4.
58. In September 1874, Canada sent a delegation to Fort Qu'Appelle to conduct treaty negotiations on behalf of the Crown with First Nations. The delegation left Fort

Garry on August 26, 1874, and arrived at Fort Qu'Appelle on September 8, 1874. The Crown's delegation included Lieutenant-Governor Morris, Minister Laird, and Commissioner Christie, a retired Hudson's Bay Company factor. The Crown's delegation was accompanied by two individuals acting as interpreters, Charles Pratt and William Daniel, and by militia. Canada does not currently have knowledge as to the number of militia or persons gathered for the treaty negotiations, but states that the First Nation individuals gathered for those negotiations numbered fewer than 2,000. The Treaty 4 negotiations spanned the course of several days, from September 8 to 15, 1874.

59. Pasqua First Nation, as represented by Chief Pasqua, was an original signatory to Treaty 4 at Fort Qu'Appelle.
60. Treaty 4 was negotiated in good faith. At the negotiations, First Nations sought reassurance from the Crown that it was engaging with good intentions. Lieutenant-Governor Morris assured the First Nations that the Crown's intentions and promises were sincere; the Crown was concerned for the wellbeing of First Nation peoples in perpetuity; and the agreement was made in contemplation of the good of the First Nations' children. Lieutenant-Governor Morris also encouraged the spokespersons of the gathered First Nations to speak their minds freely during the negotiations. The text of Treaty 4 expresses its aim to foster "peace and good will" between the Crown and First Nations.
61. The terms of Treaty 4, as recorded in English, state the First Nation signatories to the Treaty "do hereby cede, release, surrender, and yield up to the Government of the Dominion of Canada... forever, all their rights, titles and privileges whatsoever to the lands" covered by Treaty 4, though the interpretation of this provision is not at issue in this proceeding. Treaty 4 territory spans approximately 75,000 square miles located in what is now most of southern Saskatchewan as well as portions of western Manitoba and south-eastern Alberta.
62. Treaty 4 contains several promises to signatory First Nations to obtain their consent to open up the area covered by Treaty 4 to settlement, immigration, and trade. These promises included the provision of annuities, in perpetuity, of five

dollars (\$5) per person per year for each member of a signatory First Nation. The signatories to Treaty 4 intended the Annuity Payments to be confined to the specific amounts in the text of Treaty 4.

63. The Annuity Payment was an important term bargained for in Treaty 4. However, the Annuity Payment was only one of several benefits provided, within the Treaty and otherwise, in consideration for the surrender of the subject lands and to further the reconciliation of the interests of the signatory First Nations with those of the Crown and new settlers.
64. In addition to the Annuity Payments, Treaty 4 provides, among other things, that the Crown will set apart land as reserves; distribute up to seven hundred and fifty dollars (\$750) each year in powder, shot, ball and twine; provide a school on reserve; provide various tools and supplies; and provide several one-time monetary payments and goods. Treaty 4 gave beneficiaries (other than the Chief and Headmen, who received twenty-five dollars (\$25) and fifteen dollars (\$15) respectively) an initial payment or present of twelve dollars (\$12).
65. Measures taken by Canada outside of Treaty 4, pursuant to social policy, include the funding of a wide range of programs and services available to Treaty 4 First Nations and their members, including Pasqua First Nation. These programs and services include, but are not limited to, initiatives in the areas of housing and infrastructure, education, health care, social assistance, child and family services, economic development, employment assistance, transportation, democratic participation, higher education, dental care, cultural development, cultural and linguistic preservation, and governance and salaries.
66. The parties to Treaty 4 intended Annuity Payments to be confined to the specific amounts agreed upon and set out in the text of the Treaty. Canada is not required to increase the Annuity Payment under Treaty 4 and has met, and continues to meet, its Annuity Payment obligations to Pasqua First Nation under Treaty 4.

V. Relief

67. Canada seeks the following relief:

- a) dismissal of the Claim;
- b) reservation of right to seek costs upon the final determination of the proceedings; and
- c) such further relief as this Honourable Tribunal deems just.

VI. Communication

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

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: Gabriela Fuentealba and Evan Morrow

69. Facsimile number for service is (306) 975-4030.

70. Email address for service is: Gabriela.Fuentealba@justice.gc.ca

Dated this 25th day of August 2025.



ATTORNEY GENERAL OF CANADA

Department of Justice
Prairie Region (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Fax: (306) 975-4030

Per: Gabriela Fuentealba / Evan Morrow

Tel: 306-491-0844 / 639-318-4826

E-mail: Gabriela.Fuentealba@justice.gc.ca / Evan.Morrow@justice.gc.ca

Counsel for the Respondent