

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

QAYQAYT 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, SC 2008, c.22*, and the *Specific Claims Tribunal Rules of Practice and Procedure, SOR/2011-19*.

February 26, 2025

TO: QAYQAYT FIRST NATION
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I. Overview

1. The Respondent denies the assertions contained in the Declaration of Claim. The Respondent understands that the Claimant:

- (a) asserts that, in 1858, there was an "Indian village with some 400 permanent residents" at the site that would become the City of New Westminster (the "City") who were "displaced from their traditional village...when New Westminster was established as the capital in 1858", and that this was the "New Westminster Band";
- (b) asserts that the Claimant is the successor of the 1858 New Westminster Band;
- (c) asserts that, in 1862, Poplar Island was reserved for the New Westminster Band by the Colony of British Columbia (the "Colony");
- (d) asserts that, thereupon, in the 1860s, the New Westminster Band "met the legal definition of a 'band'";
- (e) asserts that, in 1874, Poplar Island became a "reserve" under the *Secretary of State Act 1868*;
- (f) asserts that, in 1876, the New Westminster Band became a "band" under the *Indian Act 1876*;
- (g) asserts that Reserve Commissioner Sproat's 1879 recommended assignment of the use of Poplar Island for the generally stated category of the "New Westminster District 'Nation' or group of Indians" was void from the outset;
- (h) asserts that, in 1879, Poplar Island was wrongfully disposed of by the Dominion of Canada (the "Dominion") by Sproat's recommended assignment of its use to "Indians", but not to any particular tribe, whereupon the New Westminster Band ceased to be a "band" under the *Indian Act*;
- (i) asserts, alternatively, that Sproat's 1879 recommended assignment of the use of Poplar Island for the generally stated category of the "New Westminster District 'Nation' or group of Indians", was intended by him to include an asserted 1858 New Westminster Band;
- (j) asserts that, in 1945, Poplar Island was wrongfully disposed of by the Dominion;
- (k) asserts a breach of trust obligations related to the management of an asserted trust over the proceeds of the 1945 sale of Poplar Island; and
- (l) asserts in the further alternative that both the Colonial Crown and the Dominion Crown "ought to have set apart Indian Reserves for the exclusive use and benefit of" the asserted New Westminster Band.

2. If the Respondent's understanding of the Declaration of Claim is incorrect, then it will seek to amend its Response.
3. In response to the Declaration of Claim, the Respondent says that Indian Agent Devlin made an Annual Report in 1902 under the heading "New Westminster Band", to describe people who lived on provisional Musqueam *Indian Act* reserve No. 1 ("provisional Musqueam IR1") and provisional Langley *Indian Act* reserve No. 8 ("provisional Langley IR8") - both on the south side of the Fraser River, and some people who owned homes in the City.
4. By 1945, any land at New Westminster that the Department of Indian Affairs may have had an interest in, had been disposed of, with the exception of Musqueam *Indian Act* reserve No. 1 ("Musqueam IR1") and Langley *Indian Act* reserve No. 8 ("Langley IR8").
5. In 1949 and 1951, a band membership list was created for "New Westminster", containing the two names of Dorothy Joseph (37 years old) and George Joseph (23 years old), but no subsequent membership list was created.
6. Around 1959, both Musqueam IR1 and Langley IR8 were surrendered for sale.
7. In 1973, "New Westminster" became a band under the *Indian Act* (OCPC 1973-3571), which scheduled a list of hundreds of band names from across Canada and declared them to be "bands for the purposes of the Indian Act". The Respondent denies that New Westminster was a band under the *Indian Act* at any time prior to 1973.
8. In 1994, Rhonda Larrabee was registered as an Indian and as a member of the New Westminster *Indian Act* band.
9. New Westminster refers to themselves as the Qayqayt First Nation, however, in the absence of an official name change, the style of cause must be amended to reflect its legal name.
10. In the context of historical reserve creation in the Colony of British Columbia, and later in the Province of British Columbia, an Indian community was an established entity with a sufficient degree of leadership, internal organization, and stability to let the Crown identify it as distinct from other such communities ("Indian community"). The

Respondent denies that from 1858 onwards there was an asserted "New Westminster Band" that came within this definition of an Indian community.

11. The Declaration of Claim does not plead the material facts necessary to establish the claim that any part of Poplar Island was set aside by the Colony for "Indian" use. Rather, the Declaration of Claim asserts that the Colony's establishment of a government reserve on Poplar Island is the evidence that the "Crown expressed its intention to set aside the land for the use and benefit of the New Westminster Band..." (paras 81 and 82 Declaration of Claim).

12. In 1859, once land clearing, surveying, and construction began, people flocked to the City from all over for work and trade. Individuals from different Indian communities came and went from the City and were part of its ever-changing population, including its visitors as well as its short-term and long-term residents.

13. In early 1859, Colonel Moody established government reserves in and around the City to defend against potential attack from the Americans and for other government purposes. These early government reserves included a large area above the City for the Royal Engineers Camp, and a large area across from the Camp on the south side of the Fraser River, as well as three lots below the City, Poplar Island below the City, and the east end of Lulu Island below the City.

14. The Respondent denies that the Colony set aside Poplar Island, or any part of it, as a Colonial Indian reserve. The Respondent further denies that the Colony decided that any part of the government reserve on Poplar Island would only be for "Indian" use.

15. Alternatively, if the Colony did decide that some part of the government reserve on Poplar Island would be only for the use of a particular Indian community, then the Respondent denies that the Claimant is the successor of any such Indian community.

16. In 1878, the Municipal Council of New Westminster ("Municipal Council") resolved to direct "Indians" living on City property to move outside the City limits. In response, in the winter of 1878/79, Reserve Commissioner Sproat interviewed the "Indian" people living in the City and found that they were not an Indian community

themselves, but rather, they belonged to various Indian communities with villages, “in different parts, up and down Harrison and Fraser Rivers”. In 1879, Sproat recommended:

- (a) that the government reserve comprising three lots of around 21 acres below the City, and part of the government reserve on the south side of the Fraser river (subject to the Herrings’ rights), be assigned for use as “village sites where numbers of Indians could temporarily reside, when at work or in search of work”, but not "for any particular tribe"; and
- (b) that the government reserve on Poplar Island (“though it lies low”) be assigned for use as a place for quarantine “in case of smallpox”, but not “for any particular tribe”.

17. Sproat recommended assignment to the "New Westminster District 'Nation' or group of Indians", as a generally stated category of Indian communities. The Respondent denies that the Claimant is the successor of an Indian community coming within such category.

18. The Respondent denies that in 1879, Sproat's recommendation regarding the use of the government reserve on Poplar Island, created an Indian reserve or any other interest in respect of which the *Indian Act* applied as a matter of law.

19. The Declaration of Claim does not plead the material facts necessary to establish the alternative claim that Sproat’s 1879 recommended assignment of the use of Poplar Island for the generally stated category of the “New Westminster District ‘Nation’ or group of Indians”, was intended by him to include an asserted 1858 New Westminster Band.

20. The Respondent seeks to "advance an approach to litigation that promotes resolution and settlement, and seeks opportunities to narrow or avoid potential litigation", and on this basis:

- (a) intends to work with the Claimant to reduce the number of issues raised in the Declaration of Claim, including by the withdrawal of claims that do not meet the condition precedent for filing a claim at the Specific Claims Tribunal (the "Tribunal");
- (b) intends to work with the Claimant to ask it to plead any missing material facts required to establish given claims, and to particularize certain material facts already pled;

(b) intends to work with the Claimant, to ask that the Tribunal focus the proceedings at the outset on certain threshold issues;

(c) intends to work with the Claimant regarding the question of whether the Specific Claim SCT 7001-24 (regarding land below the City), should be heard together with this Specific Claim SCT 7002-24 (regarding Poplar Island), and SCT 7003-24 (regarding land on the south side of the Fraser River);

(d) intends to work with the Claimant on the question of how the claim limit under s. 20(4) of the *Specific Claims Tribunal Act* (the "SCT Act") applies in the circumstances of Specific Claims SCT 7001-24, SCT 7002-24, and SCT 7003-24; and

(e) intends to "make submissions to the Tribunal as to whose interests might be affected", pursuant to s.22 of the SCT Act. The Tribunal may then decide whether to notify First Nations that they are entitled to apply to the Tribunal for leave to become a party to the litigation (Practice Directions 6 and 18).

II. Terminology

21. This Response uses the term "Declaration of Claim" or the abbreviation "DC" to mean the Declaration of Claim regarding Poplar Island served on the Respondent on November 8, 2024; and the abbreviation "para" to mean paragraph.

22. This Response sometimes uses the terms "Indian" and "tribe" to reflect the language used in historical records and legislation. This Response uses the names and spelling of First Nations and *Indian Act* bands as they appear in the historical records.

23. Department of Indian Affairs ("DIA"); Superintendent General of Indian Affairs ("SGIA"); and Deputy Superintendent General of Indian Affairs ("DSGIA").

24. By convention, orienting oneself on a river is done from the perspective of a boat headed downstream. As such, in accordance with the historical records, a reference to "below the City", means downstream from the City.

25. The "mouth" of the Fraser River is where its arms meet the Gulf of Georgia.

III. Status of Claim (SCT Rule 42(a))

26. On October 31, 2012, the Specific Claims Branch of the Department of Indian Affairs and Northern Development Canada received a claim dated October 29, 2012 from

New Westminster in the Specific Claims Process. The claim was filed with the Minister of Aboriginal Affairs and Northern Development on February 13, 2013.

27. By letter dated February 16, 2015, the Senior Assistant Deputy Minister of Treaties and Aboriginal Government informed New Westminster that some of their claims were accepted for negotiation; however, some claims were not.

28. By Band Council Resolution dated November 21, 2017, New Westminster accepted the Senior Assistant Deputy Minister's February 16, 2015 offer to negotiate.

29. On December 1, 2017, the Specific Claims Branch received a Supplemental Submission dated December 1, 2017 from New Westminster.

30. By letter dated October 25, 2022, the Acting Assistant Deputy Minister of the Resolution and Partnerships Sector, wrote to New Westminster regarding their Supplemental Submission dated December 1, 2017.

IV. Validity (SCT R. 42(b) and (c))

31. The Respondent does not admit the validity of the claims based on all of the grounds in the Declaration of Claim.

V. Declaration of Claim Facts pled - Respondent's Admissions, Denials or No Knowledge (SCT Rule 42(d))

32. The Respondent relies on SCT Rule 5, and Federal Court Rule 184(1): "All allegations of fact in a pleading that are not admitted are deemed to be denied." The DC includes matters that are not relevant to the claims, as well as evidence and argument.

33. In response to para 1 DC, the Respondent admits that since 1973, "New Westminster" is "a band as defined in subsection 2(1) of the *Indian Act*". The last sentence of para 1 DC is not relevant to proving the validity of the claims in the DC.

34. In response to para 2 DC, the Respondent admits that the following claim in the DC was previously filed with the Minister, and that "the conditions precedent to filing a claim with the Tribunal, set out in subsection 16(1)(d) of the Act" have been fulfilled regarding:

- with respect to lands that Reserve Commissioner Sproat recommended for assignment in 1879, the assertion of an unlawful disposition of Poplar Island in 1945.

35. In further response to para 2 DC, it was not understood by Canada that any claim was made in the Specific Claims Process regarding an asserted Colonial Indian reserve on Poplar Island.

36. In further response to para 2 DC, the Respondent denies that the following claims satisfy the conditions precedent to filing a claim with the Tribunal:

(a) The claim that: "[t]he Crown breached its fiduciary duty and the honour of the Crown when ... Indian Affairs omitted" the asserted New Westminster Band "as a 'band' when the 1951 *Indian Act* established legislation for the registration of Indians and bands", was not previously filed with the Minister in the Specific Claims Process (para 102 DC).

(b) The claim that there was a Qayqayt First Nation that was an independent Aboriginal rights holding collective for the purposes of s.35 of the *Constitution Act, 1982*, and the claim that long before Colonel Moody arrived at the site in 1859, any such collective used the area (paras 9, 10, 11, 27, 29, 54, 81, 93, 100, 118), cannot be filed with the Tribunal because:

(i) the Specific Claims Policy states that claims "cannot be based on, or allege, Aboriginal rights or title";

(ii) the SCT Act s.15(1)(f), states that claims "based on, or alleg[ing], aboriginal rights or title" cannot be filed at the Tribunal; and

(iii) no exploration of, or comment on, these claims can be made without engaging overlapping interests and claims by First Nations regarding the area that is now the City of New Westminster (as illustrated by the Government of Canada's public online "Aboriginal and Treaty Rights Information System").

37. In response to para 3 DC and all parts of the DC that make the same assertions, the Respondent denies:

(a) that Governor Douglas set aside any land at New Westminster for the "exclusive use and benefit" of any particular Indian community;

(b) that in 1858, there were 400 people at New Westminster that were an Indian community in the context of reserve creation;

(c) that at any time from 1858 forward, there was an asserted New Westminster Band that was an Indian community in the context of reserve creation;

(d) that any reference to a New Westminster band in the records of DIA, including from circa 1902 forward, is a reference to an Indian community in the context of reserve creation; and

(e) that any reference to a New Westminster band in the records of DIA is a reference to a "band" under the *Indian Act* band prior to 1973 (OCPC 1973-3571).

38. In response to para 4 DC, the Respondent denies that there was an asserted Colonial Indian reserve on Poplar Island, and denies that in 1879, there was any “unlawful alienation and conversion” or requirement to seek a surrender under the *Indian Act*, or otherwise.

39. In further response to para 4 DC, with respect to Commissioner Sproat’s 1879 recommendation that the government reserve on Poplar Island should be assigned for use as a place for quarantine “in case of smallpox”, but not “for any particular tribe”, the Respondent denies that there was an asserted New Westminster Band and, therefore denies that at any time after 1879 there was any “unlawful alienation and conversion” or requirement to seek a surrender from an asserted New Westminster Band under the *Indian Act*, or otherwise.

40. In response to para 5 DC, see the response to para 2 DC, above.

41. In further response to para 5 DC, with regard to the Claimant’s understanding of what was expressed in the Senior Assistant Deputy Minister’s letter of February 16, 2015, the Respondent states that the letter is subject to settlement privilege, which Canada does not waive, and the letter was written without prejudice to the positions that the Respondent may take in this litigation.

42. In response to para 6 DC, see the response to para 2 DC above.

43. In response to para 9 DC, the Respondent admits that, before there was a Colony of British Columbia, a Dominion of Canada, or Indian legislation, Indigenous people organized and defined themselves.

44. In further response to para 9 DC, and in response to paras 10 and 11 DC, see the response to para 2 DC above.

45. Para 12 DC is not relevant to proving the validity of the claims in the DC.
46. In response to para 13 DC, the Respondent admits that:
- (a) the Colony of British Columbia was established in 1858 and that Governor Douglas was tasked, among other things, with the settlement of the Colony; and
 - (b) Douglas had the authority to create Indian reserves in the Colony until he retired in 1864.
47. In response to para 14 DC, the Respondent admits that:
- (a) Richard Moody arrived at Victoria in December 1858, as Colonel of the Royal Engineers; Chief Commissioner of Lands and Works (“CCLW”); and he also held a dormant commission as Lieutenant Governor; and
 - (b) in his role as CCLW, Moody received input and instructions from Governor Douglas on lands matters, including making reserves for Indians, and prioritizing limited Colonial resources regarding lands matters.
48. In response to paras 15 and 16 DC, the Respondent admits that in March 1859, Governor Douglas wrote to Secretary of State Lytton, and in that letter:
- (a) Douglas responded affirmatively to the Secretary's question of whether it was feasible that the Indian tribes on the mainland could be settled permanently in villages;
 - (b) Douglas referenced a prior proposal he had made to the House of Assembly of the Colony of Vancouver's Island in February that where land was reserved for the benefit of Indians then the portion they were not settled on should be leased and the proceeds applied to the exclusive benefit of the Indians;
 - (c) Douglas conveyed his view that settling the Indian tribes permanently on reserves and making the settlements self-supporting by voluntary contributions by the Indians of labour or money, and by leasing the unoccupied portions, would be of benefit to the Indians and to settlers; and
 - (d) Douglas conveyed his proposal that such reserves would be made on the mainland and should include the Indians' cultivated fields and village sites.
49. In further response to para 15 DC, the Respondent admits that in May 1859 Under-Secretary Earl Carnarvon, wrote to Douglas with respect to his letter of March 1859, cautioning that “whilst making ample provision, under the arrangement proposed for the future sustenance and improvement of the Indian Tribes, you will, I am persuaded,

bear in mind the importance of exercising due care in laying out and defining the several reserves so as to avoid checking at a future day, the progress of the white colonists.”

50. In response to para 17 DC, the Respondent admits that:

(a) on February 14, 1859, Governor Douglas issued Proclamation 13, and it stated that all lands belonged to the Crown "in fee"; and

(b) on January 4, 1860, Douglas issued Proclamation 15 which, because the survey of agricultural lands in British Columbia had not been completed, allowed British subjects to pre-empt un-surveyed Crown land, but not Indian reserves or Indian settlements.

51. In further response to para 17 DC, Douglas' Proclamation 15 also excepted from pre-emption un-surveyed land that was already reserved, or which was the site of "existent or proposed" towns, and Douglas explained that this meant "[t]ownsites, with the adjacent suburban and rural land". Before Proclamation 15 was issued in January 1860, New Westminster was a townsite, Poplar Island was a government reserve, and land on the southside of the Fraser river was also a government reserve and, therefore, all were excepted from Proclamation 15. As such, the rest of para 17 DC is not relevant to proving the validity of the claims in the DC.

52. In response to para 18 DC, the Respondent admits that in October 1859, Governor Douglas forwarded to CCLW Moody a circular sent to magistrates which stated that magistrates "will...cause to be reserved, the sites of all Indian villages, and the land they have been accustomed to cultivate, to the extent of several hundred acres around each village for their especial use and benefit" and Douglas drew Moody's attention to the portion of the circular which cautioned the magistrates that "[t]own sites, with the adjacent suburban and rural land...are not to be subjected to the operation of the proposed pre-emption laws."

53. In response to para 19 DC, the Respondent admits that in January 1860 Governor Douglas wrote to Secretary of State Newcastle that the right to pre-empt un-surveyed land under the January 4, 1860 Proclamation 15 did not extend to certain lands and Douglas wrote that Proclamation 15 "distinctly reserves, for the benefit of the Crown, all town sites, auriferous land, Indian settlements and public rights whatsoever".

54. In response to para 20 DC, the Respondent admits that in October 1860, Governor Douglas described a recent journey on the mainland, including a stop at Cayoosh (later called Lillooet) at which Douglas communicated with the "native Indian tribes who assembled in great numbers at Cayoosh during" his stay. Douglas told the tribes that he met with at Cayoosh "that the magistrates had instructions to stake out, and reserve for their use and benefit, all their occupied village sites and cultivated fields and as much land in the vicinity of each as they could till".

55. In response to para 21 DC:

(a) the Respondent admits that in March 1861, the Colonial Secretary (for Douglas) wrote to CCLW Moody to request that he would distinctly mark out the sites of "the Indian Reserves throughout the Colony" and that the boundaries should be pointed out "by the Natives themselves";

(b) the Respondent admits that Governor Douglas' reserve creation policy was aimed at "Native Indian tribes" in the "villages where they resided";

(c) the Respondent denies that "Douglas sent out officials who were charged to survey as Indian reserves exactly what each Indian band requested"; and

(d) the Respondent admits that in October 1874, Douglas wrote to Indian Commissioner Powell that, during Douglas' governorship, no specific number of acres was insisted on when setting apart Indian reserves, and that instructions to surveyors were to discuss the extent and selection of the land with the Indian community, and to include, among other things "the permanent Village sites", and other land that the Indian community had an interest in due to "continuous occupation[,] tillage, or other investment of their labor."

56. In response to para 22 DC:

(a) the Respondent admits that in March 1862, the Colonial Secretary (for Douglas) wrote to CCLW Moody that, in respect to North Bentinck Arm (near Bella Coola) "[t]he land about the Indian Villages, which is in no case open to Pre-emption, should be marked upon the official maps as distinctly reserved, to the extent of 300 acres or more, at each Village, and any other land required for public purposes should be reserved before any conveyance is made of the land in that quarter"; and

(b) the Respondent admits that when Douglas issued the January 4, 1860 Proclamation 15 regarding the pre-emption of certain un-surveyed Crown land, the Colony "had not yet identified and marked out all of the Indian settlements in British Columbia".

57. The last sentence of para 22 DC is argument.
58. In response to para 23 DC:
- (a) the Respondent denies that "a survey is conclusive evidence that the Crown intended to set apart an Indian reserve"; and
 - (b) the Respondent admits that the "marking out" or identifying of Indian reserves began "after Proclamation No. 15 became law in January 1860".
59. In further response to para 23 DC, Proclamation 15 excepted from pre-emption un-surveyed land that was already reserved, or which was the site of "existent or proposed" towns. Before Proclamation 15 was issued in January 1860, New Westminster was a townsite, Poplar Island was a government reserve, and land on the southside of the Fraser river was a government reserve and, therefore, all were excepted from Proclamation 15. As such, the operation of the Proclamation is not relevant to proving the validity of the claims in the DC.
60. In response to para 24 DC, the Respondent denies:
- (a) that in the Colonial era "five different parcels of land were surveyed as 'reserves' for the Indians residing at New Westminster"; and
 - (b) that "the Government House was built on the site of Sxwaymelth, an Indian village with 400 permanent residents", and that Governor Douglas set aside any land at New Westminster on this basis.
61. In response to para 25 DC, the Respondent admits that the survey of the City began in early 1859.
62. In response to para 26 DC, the Respondent denies that "Colonial authorities...set apart 'reserve' lands for the use and benefit of the Indians residing at New Westminster in 1860 and 1862".
63. In further response to para 26 DC, the second and third sentences are argument.
64. In response to para 27 DC, the Respondent denies:
- (a) that the Colony created an Indian reserve on Poplar Island; and
 - (b) that the image shown directly under para 27 DC illustrates or is evidence of any Colonial Indian reserve, or land set aside for "Indian" use.

65. In further response to para 27 DC, the first, second, and third sentences regarding other lands, are not relevant to proving the validity of the claims made in the DC.

66. In response to para 28 DC, the Respondent denies that "[b]y 1858, approximately 400 Indians that resided permanently in New Westminster were recognized by Colonial authorities as a distinct band, group, or tribe of Indians entitled to reserve lands". The last sentence of para 28 DC is argument.

67. In response to para 29 DC:

(a) the Respondent admits that in April 1862, the Municipal Council stated to Governor Douglas that "representations were made by inhabitants residing in and near Douglas Street, of the great annoyance they experience from... a large body of Indians residing in that neighbourhood" and requested that the Governor "set apart a reserve from the Public Lands outside of the limits of the City, to which the Indians could be removed..."; and

(b) the Respondent denies that "at least 400 Indians who were permanently residing in the area had been displaced from their ... village site at Sxwaymelth when New Westminster was established as the capital."

68. Para 30 DC, regarding Governor Douglas' April 1862 direction regarding a five acre lot is not relevant to proving the validity of the claims made in the DC.

69. In response to para 31 DC, the Respondent admits that the 1873 Return of Government Reserves based on Official Maps, listed "Poplar Island, Fraser River" and indicated under the heading "Purpose" that the reserve was "available for Indian Settlement, Schools, Parks, or other public purposes", and that there was "[n]o data" for the date upon which the government reserve on Poplar Island was established.

70. In response to para 32 DC, the Respondent denies that the image shown directly under para 32 depicts a Colonial Indian reserve on Poplar Island. The image is an excerpt of an undated map with an original title across the top stating: "Reserves"; a notation in the lower right corner stating: "Drawn by J. Launders, R.E."; and a later stencil in the lower left hand corner stating: "10 T 1 Land Reserves". On this map, the circumference of Poplar Island is coloured with red ink. The red ink on this particular map indicates government reserves, and not Indian reserves, as held on appeal to the full court of the British Columbia Supreme Court in the Deadman's Island case (*British*

Columbia (Attorney General) v. Canada (Attorney General) 1904 CarswellBC 97, 11 B.C.R. 258, C.R. [1906] A.C. 389 at 407).

71. In response to para 33 DC, the Respondent denies that the image shown directly under para 33 depicts Colonial era reserves. The image appears to be a portion of the E. Mohun and W.S. Jemmett survey plan that was made for Indian Superintendent Powell in 1880 and 1881, and which plan the Claimant references at para 45 DC.

72. In response to para 34 DC:

- (a) the Respondent denies that "[b]y the late 1870s, the city of New Westminster extended west and encompassed the" government reserve that comprised three lots below the City;
- (b) the Respondent admits that from 1862 onward, some elements of the "white" population of the City complained about some elements of the "Indian" population of the City; and
- (c) the Respondent denies that "in the years following 1862" there was an asserted New Westminster Band which lived in the City and "which was comprised of approximately 400 Indians who were permanent residents with homes built on their reserve."

73. In response to para 35 DC, the Respondent admits that in 1871, British Columbia entered Confederation, thereupon becoming part of Canada. The rest of para 35 DC regarding post-confederation views on reserve creation and the appropriate size of reserves is not relevant to proving the validity of the claims made in the DC.

74. In response to para 36 DC:

- (a) the Respondent admits that the Province and the Dominion established a Joint Indian Reserve Commission in 1876; and
- (b) the Respondent denies that pursuant to the terms of his Commission, Sproat had "the authority" to create reserves "subject to approval by the [CCLW]".

75. In response to para 37 DC, the Respondent admits that in December of 1878, Indian Superintendent Lenihan wrote to Sproat regarding "four hundred permanent residents" in the City, and an additional eight hundred people who had visited the City for work over each of the last two summers.

76. In response to para 37 DC:

(a) the Respondent admits that in February 1879, Sproat wrote to Benjamin Pearse at the Dominion Government Works Office in Victoria to ask what pieces of land on the south side of the Fraser River “are Dominion property, and so at my disposal, if necessary, for Indian purposes”;

(b) the Respondent denies that Sproat asked Pearse "about which lands may have been set aside by the former Colonial government in New Westminster"; and

(c) the Respondent admits that in February 1879, Pearse responded to Sproat that "all Reserves made by the Colony of V.I. in B.C. became upon Confederation, and by virtue of the B.N.A. Act 1867, vested in the Government of the Dominion".

77. In response to para 39 DC, the Respondent denies that the sketch immediately under para 41 DC depicts Colonial Indian reserves any where in or around New Westminster.

78. In further response to para 39 DC, the Respondent denies the assertion that the sketch immediately under para 41 DC “confirms the sketch and the location of the three reserves at the mouth ‘on the north arm of the Fraser River’, produced by the Royal Engineers in 1862”. The Respondent understands the Claimant to mean an undated map with an original title across the top stating: “Reserves”; a notation in the lower right corner stating: “Drawn by J. Launders, R.E.”; and a later stencil in the lower left hand corner stating: “10 T 1 Land Reserves”. On this map there is an area below the City with the boundaries coloured with red ink. The Respondent denies that the area below the City was a Colonial Indian Reserve. The red ink on this particular map indicates government reserves, and not Indian reserves, as held on appeal to the full court of the British Columbia Supreme Court in the Deadman’s Island case (*British Columbia (Attorney General) v. Canada (Attorney General)* 1904 CarswellBC 97, 11 B.C.R. 258, C.R. [1906] A.C. 389 at 407).

79. In further response to para 39 DC, the Respondent admits that Commissioner Sproat wrote to the SGIA by letter dated June 9, 1879 that “Mr. Lenihan is in error in stating that there are no reserves in the immediate vicinity of the town except a reserve of about an acre. Three or four separate reserves in the immediate vicinity of New Westminster were laid off by the old Colonial Govt and include 25 or 30 acres.” The Respondent denies that Sproat’s statement “confirms” that the Colony created Indian reserves below the City, on Poplar Island, or on the south side of the Fraser River.

80. Para 40 DC is argument.

81. In response to para 41 DC, the Respondent admits that in early June 1879

Commissioner Sproat:

(a) communicated that he had understood that the Colony had reserved lands “for general Indian purposes, but not assigned to any particular tribe”, and this land was “little used”; and

(b) communicated his proposed recommendation to assign the use of certain land at New Westminster, and his conclusion that there were "no New Westminster Indians proper".

82. In response to para 42 DC, the Respondent admits that at the end of June 1879,

Sproat recommended the assignment of use of:

(a) the government reserve comprising three lots below the City, and part of the government reserve on the southside of the Fraser River, as places for temporary residence; and

(b) the government reserve on Poplar Island, as a place that “if prepared, though it is low” might do for quarantine use “in case of smallpox”,

but not "for any particular tribe", and instead for the "New Westminster District 'Nation' or group of Indians, to be managed by the Dept. as is found expedient".

83. In response to para 43 DC, the Respondent denies that Sproat's 1879

recommendation required an asserted band of "New Westminster Indians to accept membership in another band if they wished to" reside on the three lots below the City or on the land on the south side of the Fraser River.

84. In response to para 44 DC, the Respondent denies that Sproat recommended the assignment of use of lands at New Westminster “for the purposes of camping only”.

Rather, Sproat’s recommendation was that the government reserve comprising three lots below the City, and part of the government reserve on the southside of the Fraser River were “meant more for village sites where numbers of Indians could temporarily reside, when at work or in search of work...”.

85. In response to para 45 DC:

(a) the Respondent admits that, based on Sproat's 1879 recommendation, W. S. Jemmett surveyed the three lots below the City in 1880 and E. Mohun surveyed Poplar Island, and the land on the south side of the Fraser River in 1881, and that Indian Superintendent Powell signed the resulting plan on May 30, 1882, and that notations on the plan indicated that the three lots comprised 22.48 acres, Poplar Island comprised 27.1 acres, and that some or all of the land on the south side of the Fraser River comprised 104.25 acres; and

(b) the Respondent denies that there were "five Indian Reserves originally surveyed in 1860 and 1862".

86. The fifth sentence of para 45 DC regarding other land is not relevant to proving the validity of the claims made in the DC.

87. In response to para 46 DC, the Respondent denies:

(a) that Sproat's recommendation in 1879 regarding the three lots below the City, Poplar Island, and the land on the south side of the Fraser River was a "re-designation" of earlier Colonial Indian reserves;

(b) that the result of Sproat's 1879 recommendation "was to effectively evict most Indians from New Westminster (unless they signed a statement that they belonged to another band) and to eliminate" an asserted "New Westminster Band as a separate and distinct 'band' under the *Indian Act*";

(c) that Sproat's recommendation was motivated by a desire to "eliminate" an asserted New Westminster Band in order to "allow ... Indian Affairs to circumvent the requirements of a formal surrender under the *Indian Act*" regarding any post-1879 disposition of the land; and

(d) that Sproat's recommended assignment to the "New Westminster District 'Nation' or group of Indians", was "contrived...to allow the reserve lands to be managed by the Dept. as is found expedient".

88. In response to para 47 DC:

(a) the Respondent denies that there was an asserted New Westminster Band and therefore denies that "[b]y 1889, most members...had been dispersed";

(b) the Respondent has no knowledge of whether by 1889, the "City... wanted... Indian Reserves to be removed";

(c) the Respondent admits that in February 1889, the City Clerk communicated to Member of Parliament Chisholm to ask him to apply to the Indian Department to reconvey the three lots and Poplar Island to the City, on the basis that the three lots

were by then within the City limits and that, as such, it made sense to return them to the use of the City; and

(d) the Respondent admits that Chisholm then forwarded the February 1889 letter to Indian Affairs with a note that he recommended that the request be granted.

89. In response to para 48 DC, the Respondent admits that in April 1889, Indian Superintendent Moffatt reported that “[s]hould small pox or other deadly epidemic at any time make its appearance no better quarantine ground than Poplar Island could be found in the vicinity of New Westminster.”

90. In response to para 49 DC, the Respondent admits:

(a) that in November 1889, Agent McTiernan reported that “Poplar Island is... very necessary. At least 3000 Indians from at [sic] parts of the Province come to seek employment in this neighbourhood every Summer, and if small pox or other contagious disease should break out amongst them, there would be no [following page is missing]...”; and

(b) that later in November 1889, the SGIA decided that the three lots and Poplar Island should be retained.

91. In response to para 50 DC, the Respondent admits that in July 1890, Agent McTiernan reported to Indian Superintendent Vowell, that “City authorities” had erected buildings on Poplar Island and used it “during the months of July, August and September 1889 for small pox quarantine purposes” without authority “from any person authorised to do so”. In further response to para 50 DC, the Respondent denies that the Department took no action after the Agent’s report. Rather, the SGIA met in person with the Mayor and a deputation on July 31, 1890.

92. Para 51 DC, regarding other land, is not relevant to proving the validity of the claims in the DC.

93. In response to para 52 DC:

(a) the Respondent admits that in October 1890, surveyor Bray opined that Sproat's 1879 recommendation was intended to describe a "number of bands in common", and that once the CCLW had approved the recommendation, the land "would become the absolute property of the Indians and could not be taken from them without a formal surrender";

(b) the Respondent admits that in April 1889, Indian Superintendent Moffatt reported that there were three families residing on the three lots, and those families had been ejected from the City; and

(c) the Respondent denies that the three families were members of an asserted New Westminster Band.

94. In response to para 53 DC:

(a) the Respondent admits that in 1894, people were living on provisional Musqueam IR1 which had a church and buildings upon it;

(b) the Respondent denies that in 1894, any one was living on land outside provisional Musqueam IR1 or provisional Langley IR8 on the southside of the Fraser River, except for the Herring family;

(c) the Respondent admits that a British Columbia Verification of Birth Particulars indicates that George Joseph's birthplace was "New Westminster Indian Reserve, South Westminster";

(d) the Respondent admits that George Joseph is Chief Rhonda Larrabee's grandfather and that he was born in the 1880s; and

(e) the Respondent has no knowledge of where George Joseph was living in 1894.

95. The first sentence of para 53 DC regarding other land is not relevant to proving the validity of the claims made in the DC.

96. In response to para 54 DC:

(a) the Respondent admits that in January 1905, Chief Charlie wrote to the Prime Minister about whether the lands outside of provisional Musqueam IR1 and provisional Langley IR8, were an Indian reserve;

(b) the Respondent admits that in February 1910, Chief Charlie Squamish wrote to the Prime Minister to state that he had lived on provisional Musqueam IR1 for 26 years and had built on it and improved both it and provisional Langley IR8, and that the Musqueam band had decided to sell, such that Chief Charlie Squamish asked the Prime Minister "to let me and the few with me to live and have sole possession of this place"; and

(c) the Respondent has no knowledge of whether "Chief Charlie (Junior)" was "the son of Chief Charlie ... who died in 1908".

97. In response to para 55 DC, the Respondent denies that an asserted New Westminster Band had an interest in the three lots, Poplar Island, or land on the south

side of the Fraser River. To the extent that para 55 DC otherwise relates to land on the south side of the Fraser River, it is not relevant to proving the validity of the claims made in the DC.

98. In response to paras 56 and 57 DC, the Respondent admits that on May 14, 1912, the Mayor wrote to DSGIA Pedley to apply for the “three Reserves on the Mainland and Poplar Island...as these very materially affect our proposed Harbor plans...” and “we have several industries waiting for sites, and with the expenditures of a quite a large sum of money...these can be made valuable”.

99. Para 58 DC, regarding Provincial and Dominion views in 1910 on the location and amount of land to be "transfer[ed]" from the Province to the Dominion "for new reserves", is not relevant to proving the validity of the claims made in the DC.

100. In response to para 59 DC, the Respondent admits that:

(a) by way of a Memorandum of Agreement dated September 24, 1912, the Royal Commission on Indian Affairs was established; and

(b) the Memorandum provided that “2. The Commission...shall have the power to adjust the acreage of Indian Reserves...in the following manner: [...] (b) At any place which the Commissioners shall determine that an insufficient quantity of land has been set aside for the use of the Indians of that locality, the Commissioners shall fix the quantity that ought to be added for the use of such Indians. And they may set aside land for any Band of Indians for whom land has not already been reserved. [...] 4. The lands which the Commissioners shall determine are not necessary for the use of the Indians shall be subdivided and sold by the Province at public auction.”

101. Para 60 DC regarding other land is not relevant to proving the validity of the claims made in the DC.

102. In response to para 61 DC:

(a) the Respondent has no knowledge of whether Chief Charlie was invited to testify at the Royal Commission; and

(b) the Respondent admits that in George Roberts' testimony at the Royal Commission in September 1913, he identified Chief Charlie as chief "over the Musqueams" and over the "New Westminster Indians".

103. In response to para 62 DC, the Respondent admits that George Roberts testified at the Royal Commission that:

- (a) he and his wife and child “are now living on a reserve belonging to the Langley Indians”, and we “belong to Westminster Band of Indians”;
- (b) he had been to Poplar Island once to help fence a graveyard owned by the “Langley Indians they have smallpox and they were buried there”; and
- (c) the “Westminster Indians” had used the Poplar Island graveyard for two people who had small-pox, but otherwise their graveyard was on the 40 acre provisional Langley IR7 to the south, where he had another house.

104. In response to para 63 DC, the Respondent admits that at the Royal Commission at New Westminster in September 1913, George Roberts testified:

- (a) that he and his wife and child were the only people living on provisional Langley IR8;
- (b) that he and others living on provisional Musqueam IR1 and provisional Langley IR8 "belong to the Westminster Band of Indians"; and
- (b) in response to a question as to whether "the Langley or Musqueam Indians made any objection to your people living on these reserves", George Roberts testified that they "used to have a little trouble and the priest would talk to them and they would keep quiet about it".

105. The last sentence of para 63 DC is argument.

106. In response to para 64 DC, the Respondent admits:

- (a) that Agent Byrne's May 1914 report to the Royal Commission stated that the "New Westminster Reserves" included "three blocks in the City" that are “used by outside Indians passing to and from the hops fields, and as a camping ground when fishing”, and Poplar Island which “is subject to overflow”, and that “[p]roperly speaking these reserves should belong to the New Westminster Band of Indians who I understand occupies the Langley and Musqueam Reserve at the suggestion of the missionary”;
- (b) that Agent Byrne testified at the Royal Commission in February 1916, that “...West Coast Indians...come from all over in the fishing season, and after the fishing is over they go to the hop fields and it is while in transit that they occupy these camping grounds”;

(c) that Agent Byrne also testified regarding Poplar Island that “I believe there is an old burying ground there and a couple of families camp on the up-stream portion of it during the fishing season”; and

(d) that Agent Byrne also testified that he considered the three lots and Poplar Island as “belonging chiefly to all Indians for the purposes of camping there on during the fishing season at the Fraser River and moreover there are a few Indians which are known as the New Westminster Band who I consider have a particular right to those Reserves”.

107. In further response to para 64 DC, in February 1916, the Royal Commission asked Agent Byrne “When [the three lots and Poplar Island] were set side, according to the Minutes of Commissioner Sproat, they were set aside, as you seem to understand for all Indians?” Agent Byrne responded “yes”.

108. In response to para 65 DC, the Respondent admits:

(a) that in 1915, the Royal Commission asked Agent Byrne to prepare and send a statement showing the fair value of each reserve, and directed that “in estimating such values you will of course be guided by all such factors as the selling values of contiguous or adjacent properties, commercially strategic location, character of soil, timber values, etc., etc., in the same manner as in valuing [sic] a property of your own”; and that Agent Byrne returned a valuation for Poplar Island (noted at 27.10 acres) as \$20,000;

(b) that the Royal Commission's final report in 1916 described the three lots and Poplar Island as for “[a]ll Coast Tribes in common” and identified the three lots as “cut-off”, and identified Poplar Island as “confirmed”;

(c) that the Royal Commission’s final report in 1916 included “Analysis of Evidence – Table A – Reference and General”, in which it was recorded that Poplar Island was occupied “intermittently”; that it was 27.1 acres; that its “general condition” was “Old graveyard and camping place during fishing season”; that its value was “\$20,000”; and under “special” remarks, that “[t]his Reserve allotted for Coast Indians, in common”; and

(d) that in July 1924, by Order-in-Council P.C. 1265, the final Report of the Royal Commission dated June 30th 1916 “with the amendments thereto, as made by Mr. W.E. Ditchburn... and Major J.W. Clark...[was] approved and confirmed as constituting full and final adjustment and settlement of all differences in respect thereto between the Governments...”.

109. Para 66 DC regarding other land is not relevant to proving the validity of the claims made in the DC.

110. In response to para 67 DC, the Respondent admits that, in the context of a request to renew a lease in May 1939, Agent Daunt stated to Indian Commissioner Mackay that "[a]s these City lots belong to no particular Band of Indians, but are administered for the general benefit of the Fraser and Harrison Indians as a whole, it will not be necessary to obtain the consent of any Indian Band to the transaction".

111. In response to para 68 DC, the Respondent admits that between 1923 and 1926, a number of Chiefs and people from different reserves came forward to DIA to assert an interest in the three lots and Poplar Island and any rents arising therefrom.

112. In response to para 69 DC:

(a) the Respondent has no knowledge of any DIA view circa 1923 "that so many competing claims meant no one Band could be allotted the New Westminster Indian Reserves"; and

(b) the Respondent admits that in March 1943, in the context of an offer by the City to purchase the three lots, Agent Daunt wrote to Indian Commissioner Mackay that "[t]here is an unusual point in the Indian ownership of these lands... [...] ... the situation is wholly different to that usually encountered, and it would appear as if the Department...can deal with the matter without reference to the Indians. This point is important, as it will be almost impossible to get a combined meeting of the voters of all these different Bands, and even more difficult to obtain any unanimity among so many different interests".

113. In response to para 70 DC, the Respondent admits:

(a) that in August 1925, Ditchburn met with the Chiefs of Coquitlam, Katzie, Langley, Matsqui, Musqueam, Tsawwassen, and Whonnock, to discuss Sproat's 1879 recommended assignment of the three lots and Poplar Island;

(b) that an asserted New Westminster Band was not present at the meeting; and

(c) that in July 1926, Ditchburn wrote to the Secretary of Indian Affairs that rents from the three lots and Poplar Island could be used to pay for items in the nature of relief for Musqueam, Tsawwassen, Coquitlam, Katzie, Langley, Matsqui, Upper Sumas, Lower Sumas, Harrison River, and Chilliwack.

114. In response to para 71 DC, the Respondent admits:

- (a) that "proceeds of the leases were not held in trust for [the] use and benefit" of an asserted New Westminster Band;
- (b) that the rents from the three lots and Poplar Island were placed in Account 134, which was "a general fund" from which items in the nature of relief were paid, for some "Bands of the New Westminster Agency, plus the Musqueam Indians of the Vancouver Agency";
- (c) that an asserted "New Westminster Band was never listed as a beneficiary" of Account 134; and
- (d) that an asserted New Westminster Band was "never invited to any meeting to discuss the claims of ownership" of the three lots.

115. In response to para 72 DC, the Respondent admits:

- (a) that in December 1937, Indian Commissioner Mackay reported to Director of Indian Affairs McGill, that Indian Affairs did not recognize ownership of the three lots and Poplar Island by any band, and generally administered the lands without reference to the Indians, such that the disposal of Poplar Island did not necessarily need to be "referred to the Indians"; and
- (b) in March 1943, in the context of an offer by the City to purchase the three lots, Agent Daunt wrote to Indian Commissioner Mackay that "[t]here is really no such thing as a 'New Westminster Band'. [...] This being the case...it would appear as if the Department...can deal with the matter without reference to the Indians."

116. Para 73 DC regarding other lands is not relevant to proving the validity of the claims made in the DC.

117. In response to para 74 DC, the Respondent admits that:

- (a) in March 1943, the City engineer wrote to Agent Daunt to offer to purchase Poplar Island for \$15,000, with reference to the cost of fill to join the Island to the mainland, and installation of a water main and electrical lines (\$24,500), and with reference to projected rental income for the land once developed;
- (b) in March 1943, Indian Commissioner Mackay wrote to Ottawa to say that "[r]oughly speaking, I should say that \$1,000.00 per acre would be a fair valuation for such land and would suggest that this be considered as a basis of negotiations for sale"; and
- (c) in November 1944, the City wrote to Agent Daunt to offer to purchase Poplar Island for \$15,000, with reference to the cost to replace the old bridge, and installation of water service and light service (\$52,000).

118. In further response to para 74 DC, the Respondent admits that in November 1944, Daunt wrote to MacKay:

- (a) to enclose the City's November 1944 offer to purchase Poplar Island for \$15,000, and to report that as "[t]here are 27.10 acres in this Island...the recompense offered is at the rate of \$555.00 per acre, and not \$400.00 as stated in the letter";
- (b) to note that "it is certain that a heavy duty bridge...suitable for heavy industry, will be an expensive matter, and must be considered in relation to the market value of the property";
- (c) to state that the question was whether to "accept the offer...for credit to Account No.134, or continue to hold the property without returns, on the chance of disposing of it at some future date"; and
- (d) to report that "in view of no particular Indian Band having been mentioned in the original allotment" of Poplar Island...[....] The question of a Surrender... does not apply..."

119. In response to para 75 DC, the Respondent admits that in November 1944, MacKay wrote to Ottawa to forward the City's offer and to report that:

- (a) in 1943, Mackay has suggested a valuation of \$1,000 an acre;
- (b) MacKay and Daunt had now discussed the matter at length and agreed that \$1,000 per acre is "a fair valuation and it is recommended that this be taken as a basis in negotiations for sale"; and
- (c) that the disposal of Poplar Island "need not necessarily be referred to" the Indians.

120. In response to para 76, the Respondent admits that:

- (a) in November 1944, the Department of Mines and Resources wrote to MacKay that "[w]e note your comment as to price and it appears that we should immediately lay the foundation for further negotiations...by obtaining an independent appraisal...";
- (b) in December 1944, the Dagleish Real Estate Company appraised Poplar Island at \$14,950 (\$650 per acre) based on 23 acres (i.e., 27.1 acres less 4.1 acres that flood), no connection to mainland, no services such as water and light, and no improvements on it;
- (c) the appraisal report stated that it did not include "any estimate of potential value as [the appraisers did] not believe it is a good business to consider this angle - owing to the ever-present danger of high water flooding and high cost of providing accessibility to the mainland, cribbing and fill, and normal services";

(d) the appraisal report noted that the City assessment done 25 years prior (around 1919) was \$33,240 (land), based on 30 acres, when there was a bridge to the mainland, City services such as water and light, plus \$7,000 for improvements related to a shipyard in operation during the last war, for a total of \$40,240;

(e) in December 1944, MacKay sent a telegraph to the Indian Affairs Branch stating that an appraisal done 25 years ago valued the Island at \$33,000, and that MacKay considered that \$25,000 or thereabouts would be a fair price; and

(f) late in December 1944, MacKay wrote to the Branch to say he was “inclined to feel...that the lack of bridge connection with the city influenced too greatly [Dagleish’s] findings”, and that “[i]t is interesting to note that the valuation placed on the Reserve by the Royal Commission...was \$20,000...This figure might be accepted as a compromise...”.

121. In response to para 77 DC, the Respondent admits that in February 1945, Pemberton and Company provided an appraisal of Poplar Island:

(a) valuing it at \$16,260 (27.1 acres x \$600 per acre), but noting that “it might be difficult to find a ready buyer at this figure”;

(b) reporting that factors weighing against the value of the property included that the land is only 1 ½ – 5 feet above high water; that “in order to allow scows and barges to load and unload”, there was a need to “pile and bulkhead” the foreshore; and a bridge to the mainland was needed “which would be considerable expense”;

(c) observing that there would be a limited market for the Island, as the cost to develop it would be too great for an “ordinary firm or group of individuals”, “rather it is a property which should be added to the Port of New Westminster and could be made very valuable from that standpoint” for heavy industry or fire-hazardous industry; and

(d) that the “island could easily be held under its existing conditions and a price of \$1,000 per acre secured in the not too distant future”.

122. In response to para 78 DC, the Respondent admits that in February 1945, after receiving the Pemberton appraisal, Indian Commissioner MacKay wrote to the Indian Affairs Branch that he weighed the Pemberton view that “it would pay the Department to hold the land for a while” against the fact that “[w]e could...hold this property too long and not be any further ahead from the point of view of the Indian interests than if it were sold at a reasonable figure today, taking into consideration the interest earnings over a period of years on the amount realized.” MacKay was of the view that it was best to sell

now, and stated that his “own view is that \$20,000.00 should be secured for the property and he recommended that the City “be offered the Reserve on this basis.”

123. In further response to para 78 DC, the Respondent admits that:

(a) in February 1945, the Indian Affairs Branch wrote to the City to advise that “the price set by the Department on the Indian interest in Poplar Island is \$20,000”; and

(b) in June 1945, the City offered \$16,000 and MacKay wrote to Ottawa that he recommended sale at not less than the Pemberton valuation of \$16,260.

124. In response to para 79 DC, the Respondent admits that on July 3, 1945, OCPC 4722 authorized the acceptance of the City’s offer of \$16,260.00 “and, under the provisions of the *Public Lands Grants Act*...grant[ed] authority to issue quit claim Letters Patent therefor” and that Poplar Island contained “twenty-seven acres and one-tenth of an acre, more or less”.

125. In further response to para 79 DC, the Respondent admits that:

(a) by letter dated December 31, 1945, Agent Daunt wrote to MacKay to report that the City has paid \$16,260 and has received the “Deeds to Poplar Island”; and

(b) an asserted “New Westminster Band received none of the sale proceeds”.

126. In response to para 80 DC, the Respondent admits:

(a) that a band membership list was created in 1949 and 1951 for "New Westminster", but not thereafter; and

(b) that in 1994, Rhonda Larrabee was registered as an Indian and as a member of the New Westminster *Indian Act* band.

127. The remainder of para 80 DC is not relevant to proving the validity of the claims made in the DC.

VI. Declaration of Claim Basis in Law (SCT Practice Direction #1)

128. In response to para 81 DC, the Respondent denies:

(a) that there is any evidence that Governor Douglas *circa* 1862 expressed an intention to set aside Poplar Island as a Colonial Indian reserve; and

(b) that in early 1859, an asserted New Westminster Band was "displaced from their ...village site".

129. In response to para 82 DC, the Respondent denies:
- (a) that the Crown made a "unilateral undertaking and promise to set apart reserve lands for the 400 permanent resident Indians in New Westminster"; and
 - (b) that Royal Engineer Grant surveyed Poplar Island in 1862 or "protected Poplar Island from any settlement" in 1862.
130. In response to para 91 DC, the Respondent denies that Trutch "re-survey[ed]" asserted "colonial Indian Reserves at New Westminster".
131. In response to para 95 DC, the Respondent denies that "Sproat's Minute of Decision, dated June 30, 1879, confirmed" that "five reserves were set apart for the New Westminster Band in the colonial era".
132. In response to para 97 DC, the Respondent denies that the *Secretary of State Act* 1868 "was the earliest iteration of the *Indian Act*".
133. In response to para 98 DC, the Respondent denies that there was a Colonial Indian reserve on Poplar Island, and therefore denies that any asserted Colonial reserve on Poplar Island was "administered by Canada as a 'reserve' within the meaning of the *Indian Act* after British Columbia entered Confederation in 1871".
134. In response to para 100 DC, the Respondent denies that the Colonial government had a legislative regime that created a "legal[ly] defin[ed]... 'band'", or that caused individuals from different Indian communities who were working and living in the City to become legally defined bands.
135. In response to para 109 DC, the Respondent:
- (a) admits that an 1885 Schedule of Indian Reserves, with the heading "established by G.M. Sproat", lists under the "location" of New Westminster: (i) "North Arm of the Fraser River, part of suburbs of New Westr...Acreage 22.48...June 30, 1879"; (ii) "Poplar Island, Fraser River...Acreage 27...June 30, 1879"; (iii) "Fraser River, opposite New Westminster...Acreage 104.25...June 30, 1879"; and (iv) no approval is listed under the heading "Date of approval by C.C.L.&W."; and
 - (b) denies that "[a]n 1885 Schedule of Indian Reserves clearly identifies" the three lots, land on the south side of the Fraser River, and Poplar Island, as "set aside for the 'tribe' located at New Westminster."

136. In response to para 110 DC, the Respondent denies:

- (a) that Sproat had the authority to create reserves;
- (b) that Sproat's commission did not extend to recommending that the use of given lands be assigned to a category of Indian communities; and
- (c) that in 1879 "it was noted numerous times that there was a permanent population on" asserted Colonial reserves.

137. In response to para 112 DC, the Respondent denies:

- (a) that Sproat's 1879 recommendation to assign the use of the three lots, land on the south side of the Fraser River, and Poplar Island, to the "New Westminster 'Nation' or group of Indians" was "false and malicious"; and
- (b) that Sproat's 1879 recommended assignment "amounted to an unlawful conversion" or caused others to be unjustly enriched.

138. In response to para 117 DC, the Respondent denies that "Indians who became known as the New Westminster Band" requested that Governor Douglas "set apart the reserves".

VII. Declaration of Claim Relief Sought

139. With regard to the relief sought at para 119(d) DC, for "[a] determination that the Crown breached its trust obligations by failing to manage the proceeds from the unlawful sale of the Poplar Island Reserve for the use and benefit of the Claimant", no material facts have been pled to establish such prayer for relief.

140. With regard to the relief sought at para 119(g) DC, for "[c]osts...in relation to the Specific Claim and this proceeding", to the extent that the Claimant seeks its costs incurred in the Specific Claims Process (rather than incurred at the Tribunal), the Respondent says that this is not relief that can be given by the Tribunal.

141. With regard to the relief sought at para 119(e) DC, for "a determination that the Crown breached its fiduciary duty by failing to establish a reserve for the sole use and benefit of the Claimant" – if the Tribunal makes any such determination regarding the Colonial Crown, then the Respondent denies that any such breach became the responsibility of the Crown in right of Canada.

VIII. Respondent's Statement of Facts (SCT R. 42(e))

142. By letter dated January 28, 1859, Moody recommended to Douglas that the site of the new capital city for the mainland should be at the proposed Port of Entry on the Fraser River, because “it is easily rendered unapproachable to an enemy”. Moody described how the surrounding terrain would provide a decided advantage in case of attack by the United States; including that: (a) on the south side of the Fraser River an entrenched military camp could be placed on the rising ground; (b) to the North of the site, defensive works could be placed on the highest spot overlooking both the City and Burrard’s Inlet, to defend against attack from the rear via Burrard’s Inlet; (c) to the East of the site, defensive works could be placed on the hill on the Fraser River at the Pitt River “entirely covering the left flank”; and (d) to the West of the site, the right flank was protected by two deep channels of the Fraser and extensive marshes that could be flooded if need be.

143. Moody described that the site was also suitable for a capital city, in that it had the deep water requisite for a sea port, including “along an extended line of shore”, such that the water’s edge would be coveted as commercial sites, docks, and quays; and there was the ability to communicate with the site by water, and in the future to communicate from the site to the Interior of the mainland by “great trunk Railways”.

144. By Proclamation dated Feb 14, 1859 – Douglas proclaimed that:

- “All the lands in British Columbia...belong to the Crown in Fee”; and that “[i]t shall...be competent to the Executive at any time to reserve such portions of the unoccupied Crown Lands, and for such purposes as the Executive shall deem advisable”; and
- “The proposed Capital will be declared a Port of Entry...with all convenient dispatch. Custom House offices will then be stationed there, and vessels will be able to proceed direct to Fraser River without touching at Victoria... The whole of the river frontage will be laid out in a continuous road, the edge of which is contemplated, ultimately, to convert into a public quay”.

145. In early 1859, Colonel Moody established government reserves in and around the City to defend against potential attack from the Americans and for other government purposes. These early government reserves included a large area above the City for the

Royal Engineers Camp, and a large area across from the Camp on the south side of the Fraser River, as well as three lots below the City, Poplar Island below the City, and the east end of Lulu Island below the City.

146. A revenue station was built in the government reserve on the south side of the Fraser River. By Proclamation dated March 4, 1859, Governor Douglas proclaimed that “in order to prevent the loss of life which may be risked if ... Miners be compelled to cross the Gulf of Georgia [to report to the revenue officer at Victoria]...[....] ...a Revenue Officer ... is now stationed at or near Queenborough, in Fraser River...[....] All boats entering the Fraser River shall call and report themselves and their cargoes and passengers to the said Revenue Officer ...”

147. In early 1859, Colonel Moody did not encounter an Indian community of 400 members at the site. There was no Indian community living on the south side of the Fraser River. On March 9, 1859, Moody reported that, on the north side of the Fraser River, he had encountered “an encampment consisting of four or five families under one roof...” (who Colonial records say were led by Chief Tsimlana of the Musqueam "tribe"). Colonel Moody talked with, and reached an understanding with those families that they would move to a spot in the west end of the government reserve on the south side of the Fraser River. The Respondent denies that the Claimant is the successor of the “four or five families”.

148. Once land clearing, surveying, and construction of the City began in 1859, people flocked to the site from all over for work and trade. Individuals from different Indian communities came and went from the City and were part of its ever-changing population, including its visitors as well as its short-term and long-term residents, and those individuals were key participants in the development and economy of the City and what is now the Province of British Columbia. Although the "Indian" population in the City was identified as distinct from the "white" population, the "Indian" people living in the City did not coalesce to become a new Indian community.

149. By Proclamation dated June 15, 1859, Douglas proclaimed that the “port of Queensborough shall comprise all the waters, mouths and channels of Fraser river

between the deep water of the Gulf of Georgia and a line drawn due North and South through the Eastern extremity of Tree Island.”

150. By letter dated July 24, 1859, Douglas received guidance from the Secretary of State that the objects of government reserves included: “public Roads or other internal communications whether by land or water, or for the use or benefit of the aboriginal inhabitants of the Country, or for purposes of military defence, or as the sites of places for public worship, schools or other public Buildings, or as places for the interment of the dead, or places for the recreation and amusement of the inhabitants of any Town or Village or as the sites of public Quays or landing places on the Sea Coast or shores of navigable streams, or for any other purpose of public safety, convenience, health or enjoyment.”

151. In 1859, J.W. Trutch surveyed from the south side of the Fraser River (across from the City) to the international boundary, and his survey was certified complete by CCLW Moody in October 1859.

152. In January 1860, Colonial Secretary Young (for Douglas) advised CCLW Moody that it was sufficient to reserve 10 acres of land for established Indian villages that were located in close proximity to towns.

153. In January 1860, Captain Luard (for Moody) wrote to Sergeant McColl at Hope, to enclose part of a letter from the Colonial Secretary “relative to a reservation (of 5 chains in width) of Land beyond the extreme limit of Suburban Lots, and Land in Townships for Indian Villages.”

154. In January 1860, Colonel Moody wrote to Magistrate Spalding to ask that he would “reserve for the present, from any pre-emption claims of Rural Land, the whole of the opposite side of the river, extending from two miles above the junction of the Pitt River with the Frazer [sic] River to six miles below this City, and all across to the Frontier...on account of Military considerations of grave importance.”

155. In March 1860, Samuel and Hannah Herring began renting part of the government reserve on the south side of the Fraser River, and established gardens, an orchard, and a

dairy herd. The land was just above where Chief Tsimlana was located in the same government reserve.

156. A report to the Colonial Secretary (in 1865), stated that, before the Hudson's Bay Company established Fort Langley (in 1827), the "Quotlin Indians" "used to camp in the Salmon season where Herrings house now stands"; but that after the Fort was established "those Indians gradually ceased to resort to their old fishing ground and in 1859 the clearing was quite abandoned". The report continued, however, that some time after March 1860, nine or ten of the "Quotlin Indians" came down from Fort Langley and built a house in the east end of the government reserve on the south side of the Fraser River "a short way above Herrings". The Respondent denies that the Claimant is the successor of the nine or ten "Quotlin Indians".

157. In April 1860, Colonel Moody suggested to Justice of the Peace Spalding for his consideration, that persons found deceased and "not recognized (and who, there may be reason to believe, were not Christians)" could be interred "in one spot on the Island below the Town so that it may hereafter be railed in & set apart as a Cemetery [sic] appropriated for the purpose."

158. On April 4, 1860, the boundaries of the area for Chief Tsimlana's use and for the Herrings' use were posted by a surveyor in the government reserve on the south side of the Fraser River.

159. In August 1860, there was a re-survey of the river front land on the south side of the Fraser River into lots across from the City.

160. In May 1861, Royal Engineer Turner staked a triangle-shaped piece of land in the east end of the government reserve on the south side of the Fraser River, and his sketch was marked "Indian reserve".

161. In July 1861, the Municipal Council resolved that "as numerous complaints have been made...respecting the Indians settling and building houses on lots in this city belonging to private parties, the Council...petition the Governor to lay out a piece of land in the neighbourhood of the city, to be set aside for an Indian reserve, and that the Northern Indians (who are now arriving in large numbers) when they visit us, have some

portion set apart for their residence, and that some system be adopted of giving these Northern Indians tickets of residence for a limited time, sufficient for them to transact their business..."

162. In August 1861, the newspaper referenced downed timber "on the west end of the town plot" that was "set on fire by the parties...constructing Ellice street". Due to a south-west wind "the fire soon communicated with" fifteen "Indian houses" on land rented by the "Indians" from Chief Justice Begbie.

163. In April 1862, in response to the request of the Municipal Council, Governor Douglas ordered that a five acre lot beyond the City limits should be set aside "for the accommodation of the Indians" who were residing in the City. In May 1862, the five acre lot was laid out by a surveyor on the waterfront to the west of the City limits. The Respondent has no knowledge of whether the 1862 five acre lot overlapped, in whole or in part, with the three lots below the City (of around 21 acres) that had been previously set aside as government reserves.

164. In May 1862, the newspaper reported that 1,500 Indians lived in the City, and "during the salmon season, double that number..." In July 1862, New Westminster merchants petitioned Governor Douglas and stated that "the Mosqueam and Squamish tribes resident here, are peaceable and orderly" and they were part of the work force employed in the City.

165. The Governor did not intend that the use of the five acre lot would be limited to only the individuals then living and working in the City or to their respective Indian communities with villages elsewhere. New Westminster was a centre of activity with people from all over coming and going for work. As such, the motivation for the City's request would continue to exist into the future and with respect to an ever-changing "Indian" population in the City.

166. Governor Douglas set aside the five acre lot for general use by any member of any Indian community. He did not set it aside for any particular Indian community.

167. In November 1863, Moody left the colony, and in 1864 Douglas retired.

168. In January 1864, the newspaper reported that “[t]he Council possess the power to remove [“Indians”] from streets and squares [of the town site]...But the power of the Council to prevent Indians residing upon private lots is questioned. There are a lot ...who...lease their lots to these people...[....] The subject was...discussed in the Council....and...it seemed...there would be little prospect of...success[.]...as...the Judge of the [Superior Court] being himself one of those who...lease[s] his lots to the Indians.”

169. In 1876, the Province and the Dominion established a Joint Indian Reserve Commission, that was mandated to meet with Indian communities throughout the province, and then recommend the location and extent of reserves for those communities, and such recommendations were then subject to the approval of both the Province and the Dominion.

170. In late 1876, with a view to facilitating the work of the Reserve Commission, the surrender provisions of the *Indian Act* were suspended by Proclamation of the Privy Council.

171. In 1878, Gilbert Sproat became the sole Reserve Commissioner. In early December 1878, Sproat received a communication of concern from Indian Superintendent Lenihan that the Municipal Council had resolved in June 1878 to direct all Indians living on City property to move outside the City limits. Lenihan reported that there were currently about 400 permanent residents living in eighty dwellings that they had built in the City, on land belonging to the City and on land belonging to “private Citizen” [sic].

172. In his December 1878 letter, Lenihan also wrote:

(a) that “[t]here is no reserve in this immediate vicinity except one of about one acre in extent which was laid aside as a burial ground”;

(b) that reserves should be made beyond the City limits for “Indian” people now resident in the City to build homes and gardens on; for visiting Indians to camp on; and for a place to quarantine in case of communicable illness;

(c) that “[a] large number of the Indians of the lower Fraser Country, many from the Coast of the Mainland, and others from Vancouver Island, together with their friends, visit this place annually” for work during the fishing season and they camp in and around the City on property owned by the City and “private Citizens”; and

(d) that Lenihan suggested that “a reserve might be made on the Government Reserve immediately below the City including the small Island adjacent known as Willow Island upon which an Hospital for the sick may be erected where the sick may be isolated...” (“Willow” was a circa 1859 name for Poplar Island).

173. Sproat investigated whether there was available Crown land outside the City limits. Surveyor Jemmett provided Sproat with a tracing of the 1859 plan of the City which indicated the three government reserves below the City, and Jemmett noted that in the old plans this area beyond the City limits was referred to as “Rural Lots”.

174. In January 1879, Langley Chief Casimier wrote to Sproat to tell him that the land on the south side of the Fraser River where Chief Tsimlana was located, was Langley ancestral land.

175. In the winter of 1878/79, Sproat interviewed the "Indian" people living in the City and ascertained that there were 172 people (64 men, 61 women, and 47 children) who "belonged to 10 different tribes - about one half of the whole number belonging to the Douglas tribe, and all these tribes either have had, or will have reserves assigned to them at their own places of tribal residence. Of the above total number of Indians, only one man expressed a wish not to be on the census of his own tribe. The rest, while... anxious to have some place there on which they could live without fear of ejection, were very decided in expressing to me their attachment to their respective tribal abodes, and their unwillingness to have their names removed from the census of their own tribes." Sproat found that the people he spoke to were not an Indian community themselves, but rather, they belonged to various Indian communities with villages, “in different parts, up and down Harrison and Fraser Rivers”. Sproat concluded that there were “no New Westminster Indians proper”.

176. Sproat and a committee of the Municipal Council examined land below the City, and the government reserve on the south side of the Fraser River.

177. Due to regular flooding, Poplar Island was not seen to be suitable for building on; however, about 16 acres of the government reserve on the south side of the Fraser River, and one of the three lots comprising the government reserve below the City, were seen to be suitable for building on.

178. Based on the information he had gathered, Sproat ascertained that the Colony had reserved land "for general Indian purposes, but not assigned to any particular tribe", and this land was "little used". After making these observations, however, Sproat met with "old 'Semelano' chief of the Muskweams, and Casimir chief of the Langleys" who told him that land set aside by the Colony within the government reserve on the south side of the Fraser River had been for the use of the Langley and Musqueam "tribes".

179. Sproat also observed that housing and health in cities were matters of municipal concern; and that the policy of the Dominion was to "protect the landed property of the Indians upon their tribal reserves", and not to follow Indians about with the Crown's "administrative machinery" should people choose to leave their reserves in search of employment.

180. In addition, Sproat concluded that it would not be possible to make reserves for only some specific Indian communities outside the City limits, because members of other Indian communities also came and went from the City.

181. After balancing the many considerations, Sproat reasoned that land should be "in the hands of the Indian Department, and should not be assigned to any tribe"; and that no "tribe" or individual should be given possession of the land.

182. In early June 1879, Sproat wrote to the Municipal Council to enclose sketches of the lands "assigned by me...to the Dominion Government, for such use as the Dominion Indian Department may make of them in relation to the Indians who visit New Westminster and its neighbourhood".

183. In late June 1879, Sproat recommended:

(a) that the government reserve comprising three lots of around 21 acres below the City, and part of the government reserve on the south side of the Fraser River (subject to Herring's rights), be assigned for use as "village sites where numbers of Indians could temporarily reside, when at work or in search of work", but not "for any particular tribe"; and

(b) that the government reserve on Poplar Island ("though it lies low") be assigned for use as a place for quarantine "in case of smallpox", but not "for any particular tribe".

184. Sproat recommended assignment to the "New Westminster District 'Nation' or group of Indians, to be managed by the Dept. as is found expedient".

185. Sproat did not intend that the use of the three lots below the City, land on the south side of the Fraser River, and Poplar Island, would be limited to only the individuals then living and working in the City or to their respective Indian communities with villages elsewhere. In 1879, New Westminster was still a centre of activity with people from all over coming and going for work, and an ever-changing "Indian" population in the City.

186. In 1879, the approximate boundaries of the Provincial New Westminster Land District were those described in the Gazette of July 18, 1874.

187. In October 1879, Lenihan wrote to the DSGIA that Sproat's recommendation should not be accepted due to the difficulty to "enforce good order" among a "mixed community of Indians composed of scattered members of the various Bands now resident within this City and those frequenting here at all times for the purposes of trade...".

Lenihan wrote that it would be better for the "Indians" if they did not live in and around the City and, instead, they should "remain steadily upon their respective Reserves".

Lenihan wrote that upon their own reserves the Indians "are governed by their own Chiefs and head men and here they think they are free from any such restraint..."

188. In late 1881, E. Mohun surveyed Poplar Island "in a snow storm & a gale of wind". His field notes record that at the easternmost end of the Island, he encountered an "Indian grave" to the left of his stake 32; and "Graves to left" of his stake 35.

189. Indian Superintendent Powell signified his acceptance of Sproat's recommendation by sending Sproat's report and Minute of Decision for the General Reserves at New Westminster to the CCLW in 1880; and after the lands were surveyed, Powell then signed the resulting plan on May 30, 1882. The Province's CCLW did not accept Sproat's recommendation regarding the assignment of use of the three lots, land on the south side of the Fraser river, and Poplar Island.

190. Also in June 1879, Sproat recommended the assignment of around 5 acres to Langley on the south side of the Fraser River and, next to it, around 5 acres to

Musqueam. In addition, Sproat recommended the assignment of 40 acres at some distance back from the south side of the River – “as a general graveyard for several Indian tribes and others temporarily residing near New Westminster” and “meant generally for Indians frequenting New Westminster: but is included among the Langley reserves as they wish to move bodies to it and are the largest tribe interested in it.”

191. For the period of 1875 - 1880, the Fraser River Superintendency under Lenihan was responsible for 60 bands. The list of bands for the Superintendency did not include any reference to a New Westminster band. The 1883 Annual Report of DIA contained a note that a population of Indians who belonged to various bands, continually resided "in the city of New Westminster and at the lumber mills, Burrard Inlet".

192. In 1880, Sproat resigned and Lenihan transferred out of his position as Indian Superintendent.

193. As of 1883, the Province transferred to the Dominion the administration and control of a belt of land across the Province, “for the purpose of constructing and to aid in the construction of the Canadian Pacific Railway...” across the nation. The width of the belt was “twenty miles on each side” of the railway line. The transfer of the belt enabled the Dominion to use the land to off-set the cost of construction of the railway. The land on the south side of the Fraser River came within the railway belt.

194. In June 1887, the Province's CCLW signified his acceptance of Sproat's recommendation that land be set aside for Langley on the south side of the Fraser River.

195. In 1887, Agent McTiernan reported that “[t]here were at least 3,500 Indians camped along the banks of the Fraser, extending from Coquitlam [above the City] to Canoe Pass [lower end of the south arm], and...composed of different tribes and gathered from all parts of the Province...” McTiernan’s report included that “The abandonment by the Provincial Government of the tax of \$3 per head from all Indians found working off their reserves has allayed their fear that they were about to be dealt with unfairly.”

196. In June 1891, DIA relinquished any interest it may have had in the land in the railway belt on the south side of the Fraser River to the Minister of the Interior, with the

exception of provisional Langley IR8, and the land that Sproat had recommended be set aside for Musqueam.

197. In March 1892, the CCLW signified his acceptance of Sproat's recommendation that land be set aside for Musqueam on the south side of the Fraser River.

198. In 1894, Agent Devlin reported that there were people from Katsy, Stikeen, Squamish, and Langley living on provisional Musqueam IR1 and provisional Langley IR8 on the south side of the Fraser River. Also in 1894, regarding the three lots below the City, Devlin noted that “[t]here are no Indians camping or residing on the three Reserves at present and very few Indians have ever camped on them, as they usually camp on the Saw dust in the vicinity of the Royal City Mills”. Devlin also reported that a “family of half breeds named Vianeau whose Mother was a Chehales Indian...are the only persons occupying these Reserves...living on the small Reserve which is only about 1 ½ acres...” With regard to improvements, Devlin reported that, in addition to the Vianeau’s buildings and fruit trees, there was “also a small house on the [centre?] Reserve which was built by a Squamish Indian named Jim...”

199. In the 1902 Annual Report of DIA, Agent Devlin made a report under the heading "New Westminster Band", to describe people who lived on provisional Musqueam IR1 and provisional Langley IR8, as well some people who owned homes in the City.

200. In 1908, funds were received by DIA from the sale of a right-of-way through a portion of the three lots below the City. Account 134 was established and the funds placed into it.

201. In 1909, at the City’s request, the Province transferred to the City under Crown Grant No. 4-233 all the Provincial interest, reversionary or otherwise, to the three lots.

202. For the period 1911-1925, Agents made small payments from Account 134 for the relief of people who lived across the New Westminster Agency.

203. In 1913, the Royal Commission began travelling to each of the Indian Agencies in British Columbia. In the Commission’s final report, they stated that “[a]ll of the Coast Indians are fishermen and leave their Reserves when the salmon run occurs” and that

their “villages [were] dotted all long the 7,000 miles of Coastline” such that “a considerable portion of three Summers was occupied” visiting them.

204. In 1913, the Royal Commission met with George Roberts, who was described as being "of the New Westminster Band of Indians". Mr. Roberts confirmed that he was living on provisional Langley IR8, and that Chief Charlie lived on provisional Musqueam IR1 and was chief "over the Musqueams" and "Chief of the New Westminster Indians".

205. Mr. Roberts testified that he thought he had an interest in provisional Musqueam IR1 and provisional Langley IR8 on the basis that he had “been there long enough and no one else lives there”. He asked the Commission whether, in the event they “cut-off” provisional Langley IR8, the Westminster Indians would “have rights” to two of the City lots and Poplar Island.

206. In 1916, Agent Byrne confirmed to the Royal Commission that when he took over the Agency, he found the name "New Westminster Band" recorded in the books of his office. Agent Byrne testified that the reference to "New Westminster Band" meant the people who resided on provisional Musqueam IR1 and provisional Langley IR8. In response to the Commission's question “[d]o you make any contribution there for the relief of the aged and indigent?”, Byrne testified “[y]es...Perhaps \$20.00”.

207. The Commission asked Byrne "[d]o you happen to know from what Bands the Indians who are regarded as making up the New Westminster Band came?" Agent Byrne answered that they were from various bands, and he did not think that any of them “had their origin either at Langley or Musqueam". The Commission's final report listed the "New Westminster Band" and that it was "a composite band, its members residing chiefly on Musqueam No. 1 and Langley No. 8."

208. In 1914, Tsawwassen member George Swanaset provided a written statement to the Commission, that his father was buried on Poplar Island.

209. In 1914, Tsawwassen Chief Harry Joe, William George, and Gus Williams provided a written statement to the Commission to ask that a current reserve in the City of New Westminster be confirmed for Tsawwassen, as a place of ancestral use.

210. The Royal Commission's final report in 1916 "confirmed" provisional Musqueam IR1 and provisional Langley IR7 and IR8. The report described the three lots and Poplar Island as for "[a]ll Coast Tribes in common", and identified the three lots as "cut-off" (meaning "not necessary for the use of the Indians" so they should be sold), and identified Poplar Island as "confirmed".

211. In 1914, Canada entered into the First World War. In July 1916, DIA permitted the use of Poplar Island by a company for operating a shipyard. In 1917, the permit was assigned to another company, who built a bridge to the mainland, and four wooden transport ships for France.

212. In 1922, the permit to use Poplar Island was assigned to the New Westminster Harbour Commission, and they sublet a portion of the Island to the Department of Public Works for a fishery station.

213. In December 1921, in the context of inquiries regarding assignment of the permit, Chief Inspector of Indian Agencies Ditchburn reported to the DSGIA that "there are no Indian improvements on [Poplar] Island [but there] is one grave at the western end..."

214. In September 1923, Ditchburn wrote to Agent Daunt regarding his census which mentioned a "New Westminster Band" as comprising eighteen members. Ditchburn advised Daunt that there was not any "band of Indians of this name" and that the eighteen people should be described with reference to the bands to which they "rightly belong".

215. In February 1924, Agent Perry informed Ditchburn that the Musqueam band had sent a delegation to claim a share in the rental money earned from the three lots and Poplar Island. By March 1924, Langley, Katzie, and Coquitlam had also made a claim. In March 1925, a petition was made by Musqueam, Coquitlam, Whonnock, Matsqui, and Katsey. In August 1925, Ditchburn met with Musqueam, Coquitlam, Langley, Matsqui, Katzie, Whonnock, and Tsawwassen. Later in August 1925, a petition was made by members of Scowlitz, and the petition also referenced a claim made by Chehalis. The Scowlitz petition, bears the name of "George Joseph".

216. In October 1925, a petition was made by Chiefs of "Skwa Ind. Res. ... Skowlets Ind. Res. ... Tzeachten Ind. Res. ... Yuk-yuk-use Ind. Res. ... Tsowale Ind. Res. ...

Skulwkane Ind. Res. ... Sque-Aum Ind. Res. ... Sumas Bar Ind. Res. ... Upper Sumas Ind. Res. ... Atch-lets Ind. Res. ... Skuy Ind. Res. ... Cocoppelt Ind. Res. ... Squyhaller Ind. Res."

217. In December 1925, Agent Perry reported that two families used provisional Langley IR8 and provisional Musqueam IR1, and that George Roberts, living on provisional Langley IR8, was "a Musqueam Indian".

218. In March 1926, Ditchburn wrote to Simon Pierre of Katzie to say that, after reviewing Sproat's 1879 recommendation, Ditchburn concluded that Sproat did not recommend "any rights of ownership" to any band. In March 1926, Ditchburn reported to DSGIA Scott, that no band could claim ownership in the three lots, or the rents therefrom, because Sproat had not recommended that the land was for any particular band, in contrast to the case with "ordinary Indian Reserves".

219. In July 1926, Ditchburn communicated to Agents Daunt and Perry that Sproat's 1879 recommendation of assignment for the "New Westminster District 'Nation' or group of Indians, to be managed by the Dept. as is found expedient", was intended to comprise a category that Ditchburn described as "the Indian tribes of the New Westminster District, who in the early days used to be employed at canneries, etc. on the Lower Fraser River and temporarily made New Westminster their headquarters."

220. In July 1926, Ditchburn sent Assistant Deputy and Secretary Indian Affairs McLean a list of bands that Ditchburn identified as coming within his description of Sproat's category, and for whose members items of relief could be charged against Account 134. He listed: Musqueam, Tsawwassen, Coquitlam, Katzie, Langley, Matsqui, Sumass Upper, Sumass Lower, Harrison River, and Chilliwack.

221. In January 1926, Ditchburn reported to the DSGIA regarding Poplar Island that there were "two Indian graves which have been fenced by the [Harbour] Commission" and a prospective lessee "agreed that should the area which these graves occupied be required for the industrial plant of his company, he would pay the Indian relatives fairly for the removal of the remains in order that they might be re-interred on the Reserve to which the deceased Indians formerly belonged. I understand from the Indian Office that they were formerly Indians from the Tsawwassen Indian Reserve".

222. In January 1926, Gus Williams (writing from Port Guichon on the south arm of the Fraser River) wrote to Agent Daunt to ask that, before making any arrangements to move the “Indian graves” on Poplar Island, Mr. Ditchburn should know “that these Indians died of Smallpox about thirty years ago” and “we don’t want to move them unless it is safe to do so”.
223. In 1926, the Harbour Commission surrendered its lease of Poplar Island.
224. By 1937, the old bridge to Poplar Island had collapsed.
225. In 1938, by OIC 1036-1938, the administration and control of Poplar Island was transferred by the Province to the Dominion.
226. The sublease for the fishery station on Poplar Island was cancelled in 1939.
227. Payments made from Account 134 for the period 1926 to 1950 were generally small payments for relief.
228. In 1943, Indian Affairs sold any interest that it may have had in the three lots to the City, with the last instalment payment made in 1953.
229. In 1944, the Musqueam band surrendered IR1 for sale in 1959.
230. In 1945, Order in Council P.C. 4722 authorized the acceptance of the City’s offer of \$16,260.00 for Poplar Island “and, under the provisions of the *Public Lands Grants Act*...grant[ed] authority to issue quit claim Letters Patent therefor”.
231. Commencing in 1948, the Langley band surrendered IR8 for lease. Between 1958 and 1959, the Langley band surrendered IR8 for sale.
232. Due to the inability of Account 134 to adequately fund relief payments, Indian Affairs decided that relief would be charged instead to respective band accounts and that, beginning in 1951, it would distribute the revenue portion of Account 134 each year. In fiscal year 1959/60, Indian Affairs also distributed the capital portion of Account 134. After February 1960, there were no amounts in either the revenue or capital portions of Account 134. The distributions of revenue and capital from Account 134 were made to eighteen bands in proportion to the number of members belonging to each band, being: Musqueam, Scowlitz, Skwah, Sumas (Kilgard), Sumas (Lakahamen), Matsqui,

Aitchelitz, Soowahlie, Tsawwassen, Langley, Kwaw-Kwaw-Apilt, Coquitlam, Skulkayn, Squiala, Katzie, Tzeachten, Skway, and Yakweawkwoose.

IX. Relief sought by Respondent (R. 42(f))

233. The Respondent seeks a dismissal of all the claims set out in the Declaration of Claim.

234. If the Respondent is liable, which is not admitted, then the Province of British Columbia caused or contributed to the alleged acts or omissions and any losses arising therefrom, pursuant to paragraphs 20(1)(c) and 20(1)(i) of the SCT Act.

235. The Respondent pleads and relies on section 20 of the SCT Act.

236. Costs.

237. Such further and other relief as this Honourable Tribunal deems just.

X. Communication (R. 42(g))

Respondent's address for service:
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Attention: Peri Smith
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Dated: February 26, 2025



ATTORNEY GENERAL OF CANADA
Department of Justice Canada
British Columbia Regional Office
Per: Peri Smith
Solicitor/counsel for the Respondent