

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES August 15, 2025 Katherine Richard
D E P O S E	
Ottawa, ON	1

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

MUSKOWEKWAN FIRST NATION

Claimant

v

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

Respondent

DECLARATION OF CLAIM
Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

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

August 15, 2025

 Date

Katherine Richard

 Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
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 Ottawa, Ontario K1A 0H8
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I. Claimant

1. The Claimant, Muskowekwan First Nation (“the First Nation” or “Muskowekwan” or “the Band”) is a First Nation within the meaning of subsection 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“*SCTA*”), by virtue of being a “band” within the meaning of the *Indian Act*, RSC 1985, c I-5 and within the meaning of Treaty No. 4 (“Treaty 4”). The First Nation is located approximately 140 kilometers northeast of Regina, Saskatchewan.

II. Conditions Precedent

2. The following condition precedent set out in subsection 16(1)(a) of the *SCTA* has been fulfilled:

16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part; ...

3. The First Nation’s specific claim (“the Claim”) was filed with the Minister of Crown-Indigenous Relations (the “Minister”) on June 30, 2020. The Claim alleges that the Crown breached its treaty, statutory, fiduciary and honourable obligations owed to the First Nation arising from the taking of 164.80 acres from Muskowekwan Indian Reserve No. 85 (“IR85,” “the Muskowekwan reserve,” or “the reserve”) in 1905 by the Grand Trunk Pacific Railway Company for a railway right-of-way and station grounds.
4. By letter dated April 17, 2023, Canada accepted the Claim in part for negotiation under the Specific Claims Policy. The letter acknowledged that Canada had an outstanding lawful obligation relating to the transfer of a fee simple interest in the railway line right-of-way and the station grounds to Grand Trunk Pacific Railway Company, and that Canada breached its fiduciary duty when it failed to pursue compensation for the First Nation for the timber damaged by surveyors.
5. Regarding the other allegations in the Claim, Canada stated that compensation for those breaches, if established, was captured in the admitted breaches, those being Canada’s unlawful attempt to transfer a fee simple interest with underlying mineral rights and its breach of a fiduciary duty to pursue compensation for the damaged timber. The First Nation does not agree thus Canada’s position on these allegations constituted only a partial acceptance of the Claim.

6. By a Band Council Resolution (“BCR”) dated May 2, 2023, the Claimant agreed to enter negotiations with Canada. On August 6, 2024, the Claimant submitted a settlement proposal to the Crown which the Crown rejected.

III. Claim Limit

7. The First Nation does not seek compensation in excess of \$150 million.

IV. Grounds of the Specific Claim

8. The First Nation submits that the Claim falls within s. 14(1) of the *SCTA* which states:

14(1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

(a) a failure to fulfil a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;

(b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to Indians or lands reserved for Indians – of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada;

(c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation;

(d) an illegal lease or disposition by the Crown of reserve lands;

(e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; ...

V. Statement of Facts

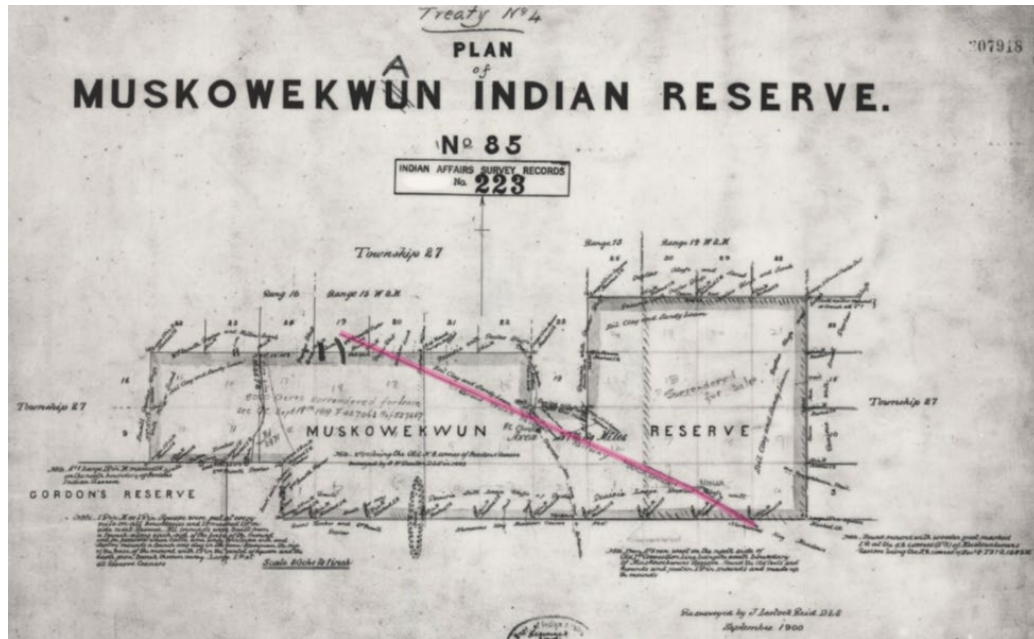
9. On September 15, 1874, Chief Ka-kee-na-wup signed Treaty 4 at Qu’Appelle on behalf of the Band.
10. Under the terms of Treaty 4, Her Majesty undertook, *inter alia*, to set aside reserve lands for the use and benefit of the bands inclusive of the Crown’s

promise that no interest in reserve lands would “be sold, leased or otherwise disposed of” without prior Band consent.

11. In 1884, a 36-square mile parcel of land (23,040 acres) was surveyed as Muskowekwan Indian Reserve No 85 by J.C. Nelson, Dominion Lands Surveyor, for the exclusive use and benefit of the Muskowekwan First Nation. IR85 was confirmed by Order-in-Council PC 1151 on May 17, 1889.
12. In 1903, the Grand Trunk Railway established the subsidiary Grand Trunk Pacific Railway Company (“GTP”) to construct a 4,800-kilometre railway line from Winnipeg, Manitoba to Prince Rupert, British Columbia.
13. In fall 1905, GTP informed Indian Agent Murison that they planned to construct the rail line to be permanently located across IR85 “almost corner ways.” Based on the GTP-proposed plans, Murison suggested in his monthly report that it would be prudent to negotiate a settlement for the cost of the land before beginning construction in the spring. He recommended asking for \$12 per acre as a fair price given that the proposed railway runs “through the best farming land” and similar land “held by actual settlers in this vicinity [is valued] at \$15.00 and upwards.”
14. On November 16, 1905, Department of Indian Affairs (“DIA”) Secretary McLean instructed Indian Commissioner Laird to inform Murison that he should not allow any railway construction work on IR85 until he received word that the right-of-way “has been duly arranged for.”
15. On December 12, 1905, J.A.J. McKenna, Assistant Indian Commissioner, stated “[t]he reasons given by Mr. Murison would seem to lead to the conclusion that \$12.00 an acre is a fair price for the land.”
16. On February 14, 1906, Tate, GTP Assistant Solicitor, sent Superintendent General of Indian Affairs Pedley “two tracings showing location line through the Muskowewun Indian Reserve No. 85 with the approval of the Deputy Minister and Chief Engineer of Railways & Canals,” requesting that GTP be allowed to purchase the displayed right-of-way under section 35 of the *Indian Act*.
17. On February 16, 1906, DIA Secretary McLean asked Murison to provide the values for Indian improvements impacted by the proposed right-of-way with the names and the expected damages.

18. On February 17, 1906, McLean asked Tate to provide the DIA with amended tracings of the right-of-way “similar to that through an ordinary subdivided township” to ensure that “patents can then be issued without covering the roads.”
19. On March 3, 1906, Murison reported that he had consulted with the Band members regarding the proposed \$12.00 per acre value of land to be used for the railroad right-of-way, which “I consider a reasonable price for the land and it is satisfactory to the Indians.”
20. Murison noted that he was unable to estimate compensation for damage to Indian improvements along the proposed railway line until he was advised on the “true location” of the line. He pointed out that there were seven survey lines “cut through the reserve” and “[i]f, the line, which has the letter (L) marked on the stakes is the right location, it only goes through one ploughed field belonging to George Bruce.” He also informed McLean that “the Indians ask \$15.00 in return for the timber destroyed by the surveyors in cutting these lines.”
21. On March 26, 1906, B.B. Kelliher, GTP Chief Engineer informed Tate that the price of \$12.00 per acre was “exceedingly exorbitant.” Additionally, he noted that the claim of \$15.00 for allegedly destroyed timber for cutlines was unusual, as it was likely part of the land they would purchase for the right-of-way.
22. As a result, GTP Assistant Solicitor Tate responded to DIA Secretary McLean on March 30, 1906, stating that the DIA is “assessing us too liberally for the land in question,” asking for a reconsideration of the \$12.00 per acre valuation and arguing that a payment for timber taken from the railway right-of-way GTP was going to purchase would constitute a double payment. Tate included a blueprint showing the desired rail line location through IR85.
23. On April 3, 1906, McLean informed the Deputy Superintendent General of Indian Affairs that GTP could not provide the plan in the requested form. He suggested accepting the plan provided and issuing a patent upon payment for the *approximate* acreage, excluding all roads from the land conveyed.
24. On March 27, 1906, G. Ryley, GTP Land Commissioner again applied to the DIA Secretary for a “Right of Way through the MusKowenun Indian Reserve... the position of which is shown on the enclosed blue print,” adding that the contractors have “commenced work a few miles East of the Reserve, and are working Westerly.” Further, Ryley requested authorization for GTP’s entry onto the reserve.

25. The sketch below shows the path of the GTP railway across IR85:



26. On April 3, 1906, McLean informed the Deputy Superintendent General of Indian Affairs that permission had been given to railway companies to enter upon and construct works on Indian reserves upon providing a deposit of \$1.00 per acre.
27. McLean recommended that GTP be given the requested permission to construct a railway line across IR85 "upon depositing \$164.80 on account of the *future* settlement of the total amount due for this right of way."
28. After making the payment of \$164.80 on April 5, 1906, Ryley sent a letter to McLean asking for permission to enter the reserve. On April 9, 1906, McLean instructed Murison to allow GTP to begin construction on the Muskowekwan reserve.
29. Regarding the valuation of the lands, McLean wrote Murison on April 12, 1906. He informed him of GTP's opinion that \$12.00 per acre was "exceedingly exorbitant," and asked for other land sale prices to confirm his valuation. Regarding the timber destroyed on IR85, McLean informed Murison that GTP "seem to consider that the greater portion of this timber will be on the land which they require for the right of way, therefore, they should not be called upon to pay for it." McLean concluded by stating that "[a]s the Company have now been allowed to enter upon the reserve, you will be able to know upon which line their railway is located, and can make a valuation of the Indian improvements."

30. On April 12, 1906, McLean once again asked Tate for right-of-way plans that show the “sections as through an ordinary subdivided township.”
31. On April 14, 1906, Laird informed McLean that rail line work has started on the reserve. Concurrently he asked McLean “whether the Right of Way has been duly arranged for.” McLean responded on April 20, 1906 that it was unknown which of the several lines surveyed on GTP was the correct line, and therefore a valuation of the improvements could not be provided. GTP wanted to proceed with the work and had made a deposit with DIA.
32. In an April 21, 1906 memorandum to the DIA Secretary Chief Surveyor Bray confirmed that a “plan duly certified by the Chief Engineer of Railways and Canals has been received of the right of way and station grounds of the Grand Trunk Pacific Railway, through the Muscowequan Indian reserve, No. 85.” He recommended that an Order in Council authorizing the DIA to sell the right-of-way should be applied for.
33. Superintendent General of Indian Affairs Oliver subsequently prepared a memorandum to council on April 26, 1906 recommending that under section 35 of the *Indian Act*, GTP be allowed to acquire 164.80 acres for railway purposes. The memorandum noted that GTP was allowed to begin work on the reserve by making a deposit of \$1 per acre since the price had not yet been agreed upon. Specifically, Indian Agent Murison valued the reserve lands at \$12 per acre and GTP stated that the land was worth at most \$5 per acre.
34. On April 30, 1906, Indian Agent Murison sent a letter to the DIA Secretary again justifying his valuation of \$12 per acre by pointing to the land value of surrounding parcels of \$9 to \$15 per acre, recounting that the only recent land sale in the vicinity fetched \$11 per acre. Further, given the angle with which IR85 would be badly cut up by the railroad, he suggested that the sales price of \$12 per acre “is well under the mark.” Considering the \$15 consideration for compensation for timber cut during surveys, Murison noted that there were seven survey lines across IR85 and that only one of those would become part of the railroad right-of-way.
35. On May 12, 1906, Order in Council PC 878, confirmed the transfer of 164.80 acres from IR85 to GTP for railway purposes (railway right-of-way and station grounds) pursuant to section 35 of the *Indian Act*.
36. On May 15, 1906, McLean informed Tate of Murison’s April 30, 1906 statement regarding the valuation of the lands taken from IR85 by stating that, since

unimproved lands in the area were valued at \$11 per acre and this right-of-way crossed the reserve diagonally, the \$12 per acre valuation was low.

37. On June 15, 1927, Letters Patent No. 20942 conveyed to GTP 162 acres of IR85 lands, comprised of a railway right-of-way and station grounds as described in Plan RR 732A. The title explicitly includes any associated mineral rights.
38. The Certificate of Title transferred title of 158.18 acres to GTP for the right-of-way and station grounds inclusive of all mineral rights. This acreage relates to the portion of IR85 designated for the right-of-way and station grounds, excluding the road allowances and navigable waters contained therein.
39. On August 1, 1906, a \$1,802.36 cheque was received by Canada from GTP in payment of 158.18 acres of land at \$12 per acre, the valuation of damages to Indian improvements, minus the payment of \$164.18 made by GTP on April 5, 1906. No payment was made for the timber cut on the survey lines that were not part of the railway right-of-way.

VI. The Basis in Law in which the Crown is said to have failed to meet or otherwise breached a lawful obligation

40. The principle of the honour of the Crown entails the Crown's duty to act at all times with integrity, fairness, and respect in all its dealings with Indigenous peoples.
41. The 1906 expropriation of IR85 lands for railway purposes took place in breach of Treaty 4 promises, without the consent of the First Nation, without compliance with all applicable legislation, and in breach of the fiduciary and honourable duties the Crown owes to the Muskowekwan First Nation.

(a) Broken Treaty Promise

42. Despite the Treaty 4 provisions regarding the requirement for consent prior to the taking of reserve lands, the Crown did not seek the First Nation's consent prior to the sale of the right-of-way and station grounds to GTP.
43. Treaty 4 expressly states that the Crown will protect the Indian reserve lands from being diminished by settlers, and neither sell, lease or dispose of these lands without the consent of the Indians. A subsequent clause in Treaty 4 states that the Crown may at any time appropriate lands for public works with the payment of compensation for improvements and land taken.
44. A later section of the written Treaty 4 text states that the Crown can take up portions of reserve lands needed for public works or building in exchange for due

compensation for improvements and equivalent land or money for the lands taken. There is no evidence from accounts of the Treaty 4 negotiations that the Treaty Commissioners referred to or explained to the Indians that reserve lands could be taken without their consent.

45. Governor Morris explicitly informed the Chiefs at the Treaty 4 signing that their approval would be needed before any of their reserve lands could be surrendered.
46. Ambiguities in the written text paired with the verbal commitments made to the Indians demands that the Treaty must be interpreted consistent with how the First Nation's would have understood the content of the treaty, meaning that the Crown was required to seek Muskowekwan consent for the expropriation of IR85 lands.

(b) *Non-Compliance with Statutory Obligations*

47. Regarding the Crown's authority to expropriate reserve lands without Muskowekwan consent, the common law germane to Crown expropriation of lands requires strict compliance with all applicable statutes.
48. The Crown and GTP failed to adhere to the procedures outlined in the *Indian Act, RSC 1886, c43, as amended by SC 1887, c 33, s 5* ("*Indian Act*") and the *1903 Railway Act, 3 Edw. VII, c. 58* ("*Railway Act*") respectively for the 1906 expropriation of IR85 lands for a railway right-of-way and station ground.
49. Both section 35 of the *Indian Act, RSC 1886, c43, as amended by SC 1887, c33, s. 5* and section 136 of the *Railway Act* require consent of the Governor in Council prior to entering IR85.
50. The *Railway Act* outlined steps GTP was required to follow when expropriating land for a railway, such as submitting and seeking approval of required documents as described in sections 122, 123, 124, 131 and 204(2). Contrary to sections 154 and 159, GTP did not complete the financial valuation, negotiation/arbitration and compensation of expropriated lands prior to the railway company taking possession and starting construction on IR85.
51. GTP entered onto IR85 to begin work related to the construction of the railway line prior to the required Governor in Council approval as prescribed in the *Indian Act* and the *Railway Act*, and prior to meeting the statutory requirements of the *Railway Act*.

(b) Breach of Crown's Fiduciary Duties

Breach of Fiduciary Duty to Comply with the Terms of Treaty 4

52. The Crown violated its fiduciary obligations to the Muskowekwan when it breached Treaty 4 by granting GTP title to part of IR85 without the Band's consent.

The Duty of Minimal Impairment of the Muskowekwan Reserve

53. In *Osoyoos Indian Band v Oliver (Town)* ("Osoyoos"), the Supreme Court of Canada ("SCC") emphasized that when expropriating land for public purposes, the Crown has a fiduciary duty to ensure that only the minimum interest necessary is taken to fulfill the public purpose, such as transferring an easement for a required right of way.
54. The Order-in-Council transferring Muskowekwan reserve land to GTP qualifies the intended land use specifically for a right of way.
55. The Crown breached its fiduciary duty to ensure minimal impairment by transferring a fee simple title to the Plan RR 732A lands.
56. The Crown also transferred the Plan RR 732A lands underlying mineral title to GTP, thus further infringing on Muskowekwan rights to minimal impairment of IR85 through Crown actions.
57. Further, the Crown failed to consider the option of routing the railway line outside the reserve or along its boundaries to ensure minimal impairment of IR85.

Fiduciary Duty to Inform and Advise the Band and Withhold Consent to a Foolish, Improvident or Exploitative Transaction

58. In its role as fiduciary, the Crown failed its duty by authorizing the outright expropriation of 162.00 acres of IR85 without seeking Muskowekwan First Nation's advice. Besides being told that land would be taken, the First Nation was given no opportunity to discuss the railroad and rail station's location, size or use. The First Nation was not consulted about fair compensation.
59. The Crown breached its fiduciary duty by authorizing the outright expropriation of 162.00 acres of IR85 without demanding the best price for it. According to Murchinson's records, he deemed the demanded price of \$12 per acre too low.

60. In its role as fiduciary, the Crown failed its duty by authorizing the outright expropriation of 162.00 acres of IR85 without ensuring the railway's interest was limited to a statutory easement or right-of-way subject to reversion to the Band when no longer required for railway purposes. No effort was made to limit the interest taken from the First Nation.
61. In its role as fiduciary, the Crown failed its duty by authorizing the outright expropriation of 162.00 acres of IR85 without protecting the Band's present and future interests in the lands. The Crown did not discuss with the Muskowekwan First Nation the land needs of the band or its members.
62. In its role as fiduciary, the Crown failed its duty by authorizing the outright expropriation of 162.00 acres of IR85 without mitigating the impact of GTP's railway line on the Muskowekwan reserve, such as by positioning the line outside or at the outskirts of the reserve. The Crown did not consult either GTP or the First Nation to determine a railway route that would minimize effects on reserve lands.
63. In its role as fiduciary, the Crown failed its duty by authorizing the cutting of timber for at least seven survey lines without consultation with the First Nation, ensuring minimal impairment on the land, the wise use of resources located on the land, and reimbursement for the value of the timber.

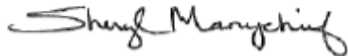
VII. Relief Sought

64. The First Nation seeks the following relief:
 - (a) Equitable compensation for the current unimproved market value of the railway right-of-way;
 - (b) equitable compensation for loss of use of the railway right-of-way since 1906 brought forward to the date of judgment;
 - (c) equitable compensation for injurious affection to IR85;
 - (d) equitable compensation for the timber losses;
 - (e) an award of solicitor-client costs pursuant to the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, section 110(2) in relation to the specific claim and this application; and

- (f) such other damages or compensation as this Honourable Tribunal deems just.

Dated this 14th day of August, 2025, at the City of Calgary, in the Province of Alberta.

MAURICE LAW



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