

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES
	D E P O S É
	October 28, 2025
	Katherine Richard
Ottawa, ON	4

SCT File No.: SCT-5004-25

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

MUSKOWEKWAN FIRST NATION

Claimant

- and -

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

Respondent

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

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

TO: Muskowekwan First Nation
As represented by Ryan Lake and Sheryl Manychief
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OVERVIEW

1. His Majesty the King in right of Canada is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation, and partnership. This commitment exists within the context of litigation and beyond. Canada endeavours to embody these principles as it assists the Specific Claims Tribunal in its task of adjudicating matters brought before it.
2. This Claim relates to whether Canada breached Treaty 4, its statutory, fiduciary or other legal duties when granting approximately 162 acres from Muskowekwan First Nation Indian Reserve Number 85 to the Grand Trunk Pacific Railway for a railway right of way and station grounds in 1906.
3. Treaty 4 expressly allowed for the taking of reserve lands for use in public works without the consent of the First Nation as long as the affected First Nation was compensated for the value of the land appropriated and for any improvements on the land. Canada consulted with Muskowekwan First Nation prior to the expropriation and compensation was paid to Muskowekwan First Nation in accordance with Treaty 4. Canada does not admit Muskowekwan First Nation's assertion that Canada breached Treaty 4 and its fiduciary duties when it expropriated the lands without Muskowekwan First Nation's consent.
4. In expropriating the lands for railway purposes, Canada does not admit that it failed to comply with its statutory obligations under the asserted provisions of the *Indian Act* and *Railway Act*. The Grand Trunk Pacific Railway received the required Governor in Council authorizations to construct the railway right of way and stations grounds and Canada obtained reasonable compensation for Muskowekwan First Nation for the appropriation.
5. Canada admits that it only breached its fiduciary duty to Muskowekwan First Nation by failing to seek compensation for timber that was damaged when the Grand Trunk Pacific Railway cut several survey lines across the First Nation's reserve and that the First Nation is entitled to compensation for that breach. Canada does not admit that it breached any other asserted fiduciary obligation owed to

Muskowekwan First Nation. Canada did not breach its duty of minimal impairment, and it secured reasonable compensation for the land appropriation that was satisfactory to Muskowekwan First Nation.

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

6. In response to paragraph 2 of the Declaration of Claim (Claim), His Majesty the King in right of Canada (Canada) admits that the condition precedent for filing the Claim with the Specific Claims Tribunal (Tribunal) is met under paragraph 16(1)(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (*SCTA*).
7. In response to paragraph 3 of the Claim, Canada admits that Muskowekwan First Nation's specific claim submission that underlies this Claim was filed with the Minister on June 30, 2020.
8. In response to paragraphs 4 and 6 of the Claim, Canada admits that the Minister partially accepted Muskowekwan First Nation's specific claim for negotiation under the Specific Claims Policy on April 17, 2023, and that Muskowekwan First Nation agreed to enter negotiations with Canada by Band Council Resolution on May 2, 2023. Muskowekwan First Nation terminated negotiations on August 14, 2025.
9. In further response to paragraphs 4 and 6 and in response to paragraph 5 of the Claim, Canada says the contents of its offer to negotiate and all communications exchanged during the negotiations, including those expressing the parties' positions, are settlement privileged. The settlement privileged information contained in these paragraphs should be struck from the Claim.

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

10. In response to paragraphs 42 to 46 of the Claim, Canada states that Treaty 4 expressly allowed for the taking of reserve lands for use in public works without the consent of the First Nation as long as the affected First Nation was compensated for the value of the land appropriated and for any improvements on the land. Muskowekwan First Nation received compensation for the appropriated land in accordance with Treaty 4.

11. In response to paragraphs 47 to 51 of the Claim, Canada states that it met its statutory obligations under section 35 of the *Indian Act*, RSC 1886, c 43, as amended (*Indian Act*), and sections 5, 122, 123, 124, 131, 136, 204, 154, and 157 of *The Railway Act, 1903*, SC 1903, c 58 (*Railway Act*). The Grand Trunk Pacific Railway (GTPR) received the required Governor in Council authorizations to construct the railway right of way and station grounds on Muskowekwan First Nation Indian Reserve Number 85 (IR 85). Canada received reasonable compensation for Muskowekwan First Nation for the lands acquired for railway purposes. Canada used contemporary comparables to determine an appropriate valuation for the lands and confirmed that its valuation was satisfactory to Muskowekwan First Nation prior to the expropriation.
12. In response to paragraphs 52 to 63 of the Claim, Canada only admits that it breached its fiduciary duty when it failed to pursue compensation on behalf of Muskowekwan First Nation for timber that was damaged by the GTPR when it surveyed railway lines on IR 85. Except for this admitted fiduciary breach, Canada states that it met its other fiduciary obligations in the circumstances: Canada was not required under Treaty 4 to obtain Muskowekwan First Nation's consent prior to the taking of IR 85 lands for public works purposes; Canada did not breach its duty of minimal impairment; and Canada consulted with Muskowekwan First Nation prior to the expropriation and received reasonable compensation that was satisfactory to the First Nation according to a valuation of the land that was based on contemporary comparables.
13. In response to paragraph 8 of the Claim, Canada does not agree that any of the claims asserted by Muskowekwan First Nation are grounded under paragraph 14(1)(a) of the *SCTA*.
14. In the event the Tribunal finds compensation is owed, Canada states that any compensation must be assessed in accordance with prevailing legal principles and section 20 of the *SCTA*.

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

15. In response to the whole of the Claim, and to paragraphs 9 to 39 and 43 and 44 in particular, Canada states that Muskowekwan First Nation has pleaded evidence contrary to Rule 39 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119. Despite this, Canada has attempted to respond to the Claim in a substantive manner.

16. Canada acknowledges that Muskowekwan First Nation is a “band” within the meaning of section 2(1) of the *Indian Act* and is a “First Nation” within the meaning of section 2 of the *SCTA*. Canada further acknowledges that Muskowekwan First Nation is located 140 kilometers northeast of Regina, Saskatchewan as pleaded in paragraph 1 of the Claim.

17. In response to paragraph 9 of the Claim, Canada admits that Muskowekwan First Nation is the successor to the band that signed Treaty 4 on September 15, 1874, under the leadership of Chief Kaw-kee-na-wup.

18. In response to paragraph 10 and in further response to paragraphs 43 and 44 of the Claim, Canada states that, among other promises in Treaty 4, Canada undertook to set aside reserve lands for signatory First Nations. Treaty 4 provides:

...And Her Majesty the Queen hereby agrees, through the said Commissioners, to assign reserves for said Indians, such reserves to be selected by officers of Her Majesty's Government of the Dominion of Canada appointed for that purpose, after conference with each band of the Indians, and to be of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families; provided, however, that it be understood that, if at the time of the selection of any reserves, as aforesaid, there are any settlers within the bounds of the lands reserved for any band, Her Majesty retains the right to deal with such settlers as She shall deem just, so as not to diminish the extent of land allotted to the Indians; and provided, further, that the aforesaid reserves of land, or any part thereof, or any interest or right therein, or appurtenant thereto, may be sold, leased or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto first had and obtained, but in no wise shall the said Indians, or any

of them, be entitled to sell or otherwise alienate any of the lands allotted to them as reserves...

...

It is further agreed between Her Majesty and Her said Indian subjects that such sections of the reserves above indicated as may at any time be required for public works or building of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land or money for the area of the reserve so appropriated...

19. In further response to paragraphs 44 and 45 of the Claim, Canada acknowledges that during the negotiations of Treaty 4, Lieutenant-Governor Alexander Morris expressed that reserve lands provided under Treaty could not be sold without the First Nations' consent. However, Canada also says that the full terms of Treaty 4 were explained to the signatory Chiefs, with the assistance of interpreters, prior to the execution of the Treaty.
20. In response to paragraph 11 of the Claim, Canada states that in 1884, Dominion Lands Surveyor, J.C. Nelson, surveyed IR 85, which consisted of a 36 square mile parcel of land located in what would become the province of Saskatchewan. IR 85 was confirmed by Order-in-Council PC 1151 on May 17, 1889.
21. In response to paragraph 12 of the Claim, Canada acknowledges that the GTPR was incorporated in 1903 to construct a 4800-kilometer railway line from Winnipeg, Manitoba to Prince Rupert, British Columbia.
22. In response to paragraph 13 of the Claim, Canada states that in fall 1905 Indian Agent Murison (Agent Murison) reported that he was informed of the GTPR's plan to construct a railway line through IR 85. In his report, Agent Murison recommended that it would be advisable to get a settlement for the land before construction commenced, and that \$12.00 per acre would be a fair price to ask for the land taken for the railway line.

23. In response to paragraph 14 of the Claim, Canada admits that on November 16, 1905, DIA Secretary McLean (Secretary McLean) instructed the Indian Commissioner, David Laird (Commissioner Laird), to inform Agent Murison that he “should not allow any work of railway construction” on IR 85 until he has been advised that the “right of way has been duly arranged for.” Commissioner Laird communicated this instruction to Agent Murison on November 21, 1905, and asked how he arrived at the valuation of \$12.00 per acre.
24. In further response to paragraph 13 of the Claim, Canada states that in a letter dated December 4, 1905, Agent Murison justified the proposed valuation of \$12.00 per acre by explaining that the “railroad survey runs through the best farming land” on IR 85, that land similar to it is held by settlers in the area at \$15.00 and upwards, and that other land companies are holding land they have from \$10.00 upwards.
25. In response to paragraph 15 of the Claim, Canada admits that, in a letter to Secretary McLean dated December 12, 1905, Assistant Indian Commissioner, J.A. McKenna, commented that Agent Murison’s valuation of \$12.00 per acre for the railway right of way is a fair price considering the reasons provided by Agent Murison.
26. In response to paragraph 16 of the Claim, Canada admits that on February 14, 1906, Darcy Tate (Tate), an Assistant Solicitor with the GTPR, wrote to the Deputy Superintendent General of Indian Affairs, Pedley (DSGIA Pedley), enclosing copies of two tracings that showed the location of the proposed railway line through IR 85 “with the approval of the Deputy Minister and Chief Engineer of Railways & Canals endorsed thereon”; the letter stated that this endorsement showed that the portion of IR 85 was actually required for railway purposes and that the GTPR should be allowed to acquire the land under section 35 of the *Indian Act*.
27. In response to paragraph 17 of the Claim, Canada admits that on February 16, 1906, Secretary McLean instructed Agent Murison to provide a valuation of the approximate 164.8 acres required for the railway line and a separate valuation of

any damages that “may be done to Indian improvements” along with the names of “each Indian injured”.

28. In response to paragraph 18 of the Claim, Canada states that on February 17, 1906, because IR 85 was subdivided into sections before it was set aside as a reserve, Secretary McLean requested that Tate provide the Department of Indian Affairs (DIA) with amended tracings of the railway right of way “similar to that through an ordinary subdivided Township showing the areas taken from each quarter section.” The letter also noted that the “roads are not part of the Indian reserve.”
29. In further response to paragraph 18 of the Claim, Canada says that in a separate memo from Secretary McLean to DSGIA Pedley dated February 17, 1906, Canada explained the reasons for requesting the amended tracings so that, when required, “patents can then be issued without covering the roads.”
30. In response to paragraphs 19 and 20 of the Claim, Canada states that on March 3, 1906, Agent Murison reported to Secretary McLean that he had consulted with members of Muskowekwan First Nation regarding the price per acre of the lands required by the GTPR and had “placed a value of \$12.00 per acre thereon.” Agent Murison further wrote that he considered the valuation a “reasonable price for the land” and that it was “satisfactory to the Indians.”
31. In further response to paragraph 20 of the Claim, Canada says that Agent Murison also noted that there were seven survey lines cut through IR 85 and that “the Indians ask \$15.00 in return for the timber destroyed by the surveyors in cutting these lines.” Agent Murison wrote that he was unable to provide a valuation of the “Indian improvements” until he knew the “true location” of the line, as one of the planned lines would go through a ploughed field.
32. In response to paragraph 21 of the Claim, Canada admits that on March 26, 1906, the Chief Engineer of the GTPR, B. B. Kelliher, informed Tate that Agent Murison’s \$12.00 per acre valuation was “exceedingly exorbitant” and suggested

that \$5.00 per acre should be the maximum amount paid. Kelliher wrote that the “claim of \$15.00 for timber alleged destroyed is very unusual as it probable that this was portion of the land which we acquired for the right-of-way” and that the GTPR should not be “called upon to pay twice.”

33. In response to paragraph 22 of the Claim, Canada admits that on March 30, 1906, Tate wrote to Secretary McLean and asserted that Agent Murison’s valuation was assessed “too liberally for the land in question” and requested a revised amount, noting that \$5.00 per acre had previously been charged for similar lands. Tate explained, with respect to the timber, that “if this was taken from the land sought to be acquired the value thereof would be included in the purchase money and we should not be compelled to pay twice for the same.”
34. In response to paragraph 23 of the Claim, Canada acknowledges that in an April 3, 1906 memo, Secretary Mclean advised DSGIA Pedley that the GTPR was unable to find any traces of IR 85’s subdivision to resubmit corrected plans as requested in February 1906. Secretary McLean suggested that the DIA “might accept their plans and issue a patent to them upon payment for a total approximate acreage with a proviso that all roads as laid out in this former subdivision are excluded from the land conveyed to them.”
35. In response to paragraph 24 of the Claim, Canada admits that on March 27, 1906, G. U. Ryley, GTPR Land Commissioner (Ryley), wrote to Secretary McLean and applied for the railway right of way through IR 85. In the letter, Ryley informed Secretary McLean that contractors had started work a few miles east of the reserve, working westerly, and requested permission for them to enter IR 85 and begin construction.
36. In response to paragraph 25 of the Claim, Canada acknowledges that the sketch reproduced in that paragraph shows the approximate proposed path of the GTPR rail line across IR 85.

37. In response to paragraphs 26 and 27 of the Claim, Canada admits that on April 3, 1906, Secretary McLean wrote a memo to DSGIA Pedley recommending that, upon the payment of a deposit “on account of the future settlement of the total amount due for this right of way”, the GTPR be granted permission to enter IR 85 and commence construction on the rail line. Secretary McLean recommended a deposit of \$164.80, consisting of \$1.00 per acre for 164.80 acres, in accordance with past DIA practices.
38. In response to paragraph 28 of the Claim, Canada admits that on April 5, 1906, Ryley sent Secretary McLean a cheque for \$164.80 and requested permission to commence work. On April 9, 1906, Secretary McLean instructed Agent Murison to allow the GTPR to commence work on IR 85.
39. In response to paragraph 29 of the Claim, Canada states that on April 12, 1906, Secretary McLean wrote to Agent Murison and advised him of the GTPR’s view that his \$12.00 per acre valuation was “exceedingly exorbitant”. Secretary McLean asked for other instances of sales in the neighbourhood to confirm Agent Murison’s valuation.
40. In further response to paragraph 29 of the Claim, Canada says that in Secretary McLean’s April 12, 1906 letter to Agent Murison, Secretary Mclean also addressed the value of the timber that was cut, stating that regarding “the claim of \$15 for timber alleged to be destroyed, they seem to consider that the greater portion of this timber will be on the land which they require for right of way, therefore they should not be called upon to pay it.” Secretary McLean also informed Agent Murison that the GTPR can enter IR 85, after which Agent Murison “will be able to know upon which line their railway is located, and can make a valuation of the Indian improvements.”
41. In response to paragraph 30 of the Claim, Canada acknowledges that on April 12, 1906, Secretary McLean wrote to Tate and informed him that the IR 85 lands were subdivided during the winter of 1880-1881, and that when the reserve was set aside,

the sections as showing in the plans constituted the reserve. Accordingly, Secretary McLean advised Tate that it was necessary to have the right of way plans showing “sections as through an ordinary subdivided township.”

42. In response to paragraph 31 of the Claim, Canada admits that on April 14, 1906, Commissioner Laird informed Secretary McLean that the GTPR had started work on IR 85 and asked Secretary McLean to advise whether “the Right of Way has been duly arranged for”.
43. In further response to paragraph 31 of the Claim, Canada says that on April 20, 1906, Secretary McLean replied to Commissioner Laird and advised that Agent Murison could not determine which of the several lines through IR 85 that were surveyed by the GTPR was the correct one such that a valuation of the affected Indian improvements could be provided. Secretary McLean also advised that the GTPR was “desirous of proceeding immediately with the work” on IR 85 and that it had been allowed to do so after paying the DIA a deposit.
44. In response to paragraph 32 of the Claim, Canada acknowledges that in a memo dated April 21, 1906, S. Bray, DIA Chief Surveyor (Bray), informed Secretary McLean that a plan certified by the Chief Engineer of Railways and Canals for the right of way and station grounds of the GTPR through IR 85, consisting of 164.80 acres, had been received. Bray suggested that “the usual Order in Council authorizing the Department to sell this right of way, on such terms as may be agreed upon, should be applied for.”
45. In response to paragraph 33 of the Claim, Canada admits that on April 26, 1906, a draft memorandum to cabinet in the name of the Superintendent General of Indian Affairs, Frank Oliver, was prepared. The memorandum advised that the GTPR applied to the DIA for 164.80 acres of land on IR 85 for right of way and station grounds. The memorandum further advised that the GTPR provided a plan of the land applied for certified by the Chief Engineer of the Department of Railways and Canals that “the said land is actually required by the railway company for railway

purposes and is such as the company should be allowed to acquire under sec. 35 of the Indian Act”.

46. In further response to paragraph 33 of the Claim, Canada says that a separate typed note with the draft memorandum stated that the GTPR had been allowed to commence work on IR 85 after making a deposit of \$1.00 per acre on account of a total amount to be settled in the future. The note stated that the price had not been decided upon at that time, with Agent Murison valuing the land at \$12.00 per acre and the GTPR valuing the same at \$5.00 per acre.
47. In response to paragraph 34 of the Claim, Canada states that on April 30, 1906, Agent Murison wrote to Secretary McLean regarding his \$12 per acre valuation of lands required for the railway. In that letter, Agent Murison advised that land is being held in the area from \$9.00 to \$15.00 per acre, and that the cheapest land being offered for sale, situated ten miles away, is held at \$8.00 per acre. Agent Murison wrote that the only sale he was aware of in the vicinity was a land purchase for \$11.00 per acre. Agent Murison concluded that, considering the proposed GTPR rail line crosses through IR 85 and “cuts it up badly”, along with the prices asked by companies that hold land in the vicinity of the reserve, the current \$12.00 valuation is “well under the mark” and that the GTPR’s \$5.00 per acre valuation was “unreasonably low.”
48. In further response to paragraph 34 of the Claim, Canada admits that Agent Murison advised that there were seven survey lines cut through IR 85, from which only one was required for the right of way.
49. In response to paragraph 35 of the Claim, Canada admits that on May 12, 1906, Order-in-Council 878 authorized the GTPR’s acquisition of the right of way and station grounds on IR 85, consisting of 164.80 acres, under section 35 of the *Indian Act*.

50. In response to paragraph 36 of the Claim, Canada states that on May 15, 1906, Secretary McLean informed Tate of Agent Murison's valuation of \$12.00 per acre, along with the justification for that valuation, for the railway right of way. Secretary McLean also requested that the GTPR take measures to have the line fenced on both sides through the reserve as soon as possible following the completion of the work.

51. In response to paragraph 39 of the Claim, Canada says that on August 1, 1906, the DIA recorded the receipt of payment from the GTPR in the amount of \$1,802.36. This amount consisted of payment for 158.18 acres of land at \$12.00 per acre, \$69.00 for damages for Indian improvements, minus the \$164.18 deposit previously made by the GTPR. The GTPR did not make payment for any timber cut on IR 85 while the lines were surveyed.

52. In response to paragraphs 37 of the Claim, Canada states that letters patent number 14530, issued August 27, 1906, conveyed to the GTPR 158.18 acres of IR 85, comprised of a railway right of way and station grounds and excluding road allowances and navigable waterways. This land was later re-conveyed to the DIA by deed dated April 26, 1927.

53. In further response to paragraph 37 of the Claim, Canada states that new letters patent number 20942, issued on June 15, 1927, conveyed to the GTPR 162 acres of IR 85, comprised of a railway right of way and station grounds and excluding road allowances and navigable waterways. Canada does not agree that either the 1906 or the 1927 letters patent expressly referenced any transfer of mineral rights.

54. In response to paragraph 38 of the Claim, Canada does not agree that a Certificate of Title transferred title of 158.18 acres to the GTPR for the right of way and station grounds inclusive of all mineral rights. Canada says that the referenced Certificate of Title, dated April 26, 1927, reflects that the right of way and station ground lands acquired by the GTPR in 1906 were reconveyed to His Majesty the King.

55. In further response to paragraphs 37 and 38 of the Claim, Canada says that on December 28, 1908, Muskowekwan First Nation surrendered its coal and mining rights on IR 85 to the Crown. The terms of the surrender allowed the Crown to dispose of the coal and mining rights on terms that the Crown deemed most conducive to the welfare of Muskowekwan First Nation on the condition that all moneys received from the dispositions shall, after deducting the usual portion for management expenses, be placed to Muskowekwan First Nation's credit with interest paid thereon in the usual way. This surrender is not the subject of Muskowekwan First Nation's underlying specific claim.

IV. Canada's Statements of Fact

56. On September 15, 1874, Canada entered into Treaty 4, or the Qu'Appelle Treaty, with Cree, Saulteaux and other First Nations in what is now Saskatchewan. Chief Ka-kee-na-wup signed the Treaty on behalf of Muskowekwan First Nation.

57. IR 85 was surveyed for Muskowekwan First Nation in 1884 and confirmed by Order-in-Council PC 1151 on May 17, 1889.

58. In 1903, the GTPR was incorporated to construct a 4800-kilometer western railway line from Winnipeg, Manitoba to Prince Rupert, British Columbia. The GTPR was incorporated by the enactment of *An Act to incorporate the Grand Trunk Pacific Railway Company*, SC 1903, c 122.

59. The contract allowing for the construction of the GTPR western railway line was approved by Order-in-Council 1308 on July 30, 1903. The contract provided that the GTPR would construct its portion of the railway at the cost of the company according to the plans and specifications approved by the Crown. The contract was ratified and confirmed to be binding upon the Crown and the GTPR following the enactment of *An Act respecting the construction of a National Transcontinental Railway*, SC 1903, c 71.

60. In the fall of 1905, agents of the GTPR informed Agent Murison that construction on the rail line across IR 85 would be commenced in the spring of 1906. Agent Murison recommended that a settlement for the land be reached before construction commenced and advised that \$12.00 per acre would be a fair price to ask for the lands taken for railway purposes.
61. On November 16, 1905, DIA Secretary McLean instructed Indian Commissioner Laird to inform Agent Murison that no work on IR 85 should be allowed for the construction of the GTPR railway until a right of way has been duly arranged for.
62. In response to a request from Commissioner Laird, on December 4, 1905, Agent Murison justified his valuation of the lands required by the GTPR as being reasonable by explaining that the railroad survey runs through the best farming land on IR 85, that similar land is held by settlers in the area at \$15.00 and upwards, and that other land companies are holding any land they have from \$10.00 upwards.
63. On February 8, 1906, Tate, an Assistant Solicitor of the GTPR, wrote to DSGIA Pedley enclosing copies of two tracings that showed the location of the proposed railway line through IR 85 with the endorsement of the Deputy Minister and Chief Engineer of Railways & Canals. The letter stated that the endorsement showed that the portion of IR 85 was required for railway purposes and that the GTPR should be allowed to acquire the land under section 35 of the *Indian Act*.
64. Canada subsequently requested that the GTPR provide amended tracings like an ordinary subdivided Township, showing the areas taken from each quarter section, as IR 85 was already subdivided into sections before it was set aside as reserve and surveyed road allowances were not part of IR 85. This way, patents could be issued without covering the roads.
65. On February 16, 1906, Secretary McLean requested Agent Murison to provide a further valuation of the 164.8 acres of land required by the GTPR for railway purposes, and a separate valuation of any damages done to "Indian improvements".

66. On March 3, 1906, Agent Murison reported to Secretary McLean that he consulted with members of Muskowekwan First Nation regarding the price per acre of lands required by the GTPR and placed a value of \$12.00 per acre thereon. Agent Murison considered this a reasonable price for the land that was satisfactory to members of Muskowekwan First Nation.
67. In his March report, Agent Murison also noted that there were seven survey lines cut through IR 85 and that Muskowekwan First Nation asks for \$15.00 in return for the timber destroyed by the surveyors in cutting the survey lines. Agent Murison could not provide a valuation for the "Indian improvements" until he knew the true location of the rail line.
68. On March 30, 1906, the GTPR disputed the DIA's valuation of the lands, calling the valuation "exceedingly exorbitant" and saying the valuation was assessed "too liberally for the land in question". The GTPR suggested that \$5.00 per acre would be a more appropriate price. With respect to the request for compensation for timber cut for the survey lines, the GTPR was of the view that if the timber was cut from the lands it sought to acquire, the value would be included in the purchase price and the GTPR should not be made to pay for the same.
69. On March 27, 1906, GTPR Land Commissioner Ryley wrote to Secretary McLean and informed him that the GTPR had started work a few miles east of IR 85 and was working westerly. Ryley requested permission for contractors to enter IR 85 and begin construction.
70. On April 3, 1906, Secretary McLean recommended to DSGIA Pedley that upon the payment of a deposit in the amount of \$1.00 per acre for 164.80 acres, the GTPR be granted permission to enter IR 85 and begin construction on the rail line.
71. The GTPR sent the \$164.80 deposit to Secretary McLean on April 5, 1906, and Secretary McLean subsequently informed Agent Murison on April 12, 1906, that the GTPR could enter IR 85 to commence work on the rail line.

72. In his April 12, 1906, letter, Secretary McLean also advised Agent Murison of the GTPR's view that his \$12.00 per acre valuation was "exceedingly exorbitant" and that \$5.00 per acre would be a high price. Secretary McLean asked Agent Murison to provide other instances of sale in the vicinity to confirm his valuation. Secretary McLean also addressed Muskowekwan First Nations claim of \$15.00 for timber cut on IR 85 for the survey lines, stating that the GTPR had the view that the timber would be on land they would acquire for the right of way, and they should not be made to pay for it. Finally, Secretary McLean wrote that because the GTPR was allowed to enter IR 85 to begin work, Agent Murison would know upon which line their railway was located and could make a valuation of Indian improvements.
73. On April 21, 1906, DIA Chief Surveyor Bray informed Secretary McLean that they had received a plan duly certified by the Chief Engineer of Railways and Canals for the right of way and station grounds of the GTPR through IR 85. Bray recommended that an Order-in-Council authorizing the DIA to sell the right of way should be applied for.
74. On April 30, 1906, Agent Murison responded to Secretary McLean regarding his valuation of the lands sought by the GTPR. Agent Murison defended his valuation of \$12.00 per acre, stating: that land is being held in the vicinity of the GTPR from \$9.00 to \$15.00 per acre; that the cheapest land being offered for sale, situated 10 miles away, is held at \$8.00 per acre; that the only sale he is aware of in the vicinity was a land purchase for \$11.00 per acre for unimproved land; and that consideration should be given to the fact that the proposed GTPR line crosses through IR 85 and "cuts it up badly". Considering these factors, Agent Murison concluded that his valuation was reasonable and that the GTPR's \$5.00 per acre proposal was unreasonably low.
75. In his response, with respect to Muskowekwan First Nation's claim for damaged timber and the GTPR's view that payment for such damages would amount to double payment, Agent Murison advised that there were seven survey lines cut through IR 85, from which only one was required for the right of way.

76. On May 12, 1906, Order-in-Council PC 878 authorized the GTPR to acquire 164.80 acres on IR 85 under section 35 of the *Indian Act* for a railway right of way and station grounds. The 1906 OIC advised that the Department of Railways and Canals endorsed the GTPR's plan of the land applied for, which showed the land was required for railway purposes.
77. On May 15, 1906, Secretary McLean informed the GTPR of the \$12.00 per acre valuation for the right of way and station ground lands and communicated Agent Murison's justification for the valuation that was provided on April 30, 1906. Secretary McLean also requested that the GTPR take measures to have the line fenced on both sides through the reserve as soon as possible following the completion of the work.
78. On May 19, 1906, Secretary McLean wrote to Tate and provided a valuation for the damage done to Indian improvements on IR 85. The damages were valued at \$69.00. In his letter, Secretary McLean affirmed the valuation for the right of way at \$12.00 per acre.
79. On August 1, 1906, the DIA recorded the receipt of a \$1,802.36 payment from the GTPR. The amount was payment for 158.18 acres of land at \$12.00 per acre, \$69.00 for damages to Indian improvements, minus the \$164.18 deposit that was previously paid by the GTPR. The GTPR did not make any payment for damage to timber on IR 85.
80. The Crown issued letters patent number 14530 on August 27, 1906. The 1906 Letters Patent conveyed to the GTPR 158.18 acres of IR 85, more or less, comprised of a railway right of way and station grounds and excluding road allowances and navigable waterways. The land grant was in consideration for the sum of \$1,967.16.
81. The lands granted to the GTPR in the 1906 Letters Patent were later re-conveyed to the DIA by deed dated April 26, 1927.

82. The Crown issued new letters patent number 20942 on June 5, 1927. The 1927 Letters Patent conveyed to the GTPR 162 acres, more or less, of IR 85, comprised of a railway right of way and station grounds and excluding road allowances and navigable waterways. This second grant was in consideration for the sum of \$2,068.81. The land granted in the 1927 Letters Patent was described in plan number R.R. 732A, which was surveyed by E.C. Brown, Dominion and Saskatchewan Land Surveyor in 1925.

83. Neither the 1906 nor the 1927 letters patent conveyed mineral rights for the lands granted to the GTPR. Muskowekwan First Nation surrendered their coal and mining rights for all of IR 85 to the Crown on December 28, 1908.

V. Relief

84. Canada seeks the following relief:

- a) An Order awarding compensation owed to Muskowekwan First Nation for the admitted breach of fiduciary duty, determined in accordance with section 20 of the *SCTA*;
- b) An Order dismissing the remainder of the Claim; and
- c) Such further relief as this Honourable Tribunal deems just.

85. Canada may decide not to seek costs upon the final determination of the proceedings; however, it reserves the right to seek such costs

VI. Communication

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

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

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

88. Email address for service is: Gabriela.Fuentealba@justice.gc.ca and
evan.morrow@justice.gc.ca.

Dated this 28th day of October, 2025.



ATTORNEY GENERAL OF CANADA

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