

SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDIATIONS PARTICULIÈRES	
September 4, 2020	Isabelle Bourassa
Ottawa, ON	6

SCT File No.: SCT-6001-20

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

ENOCH CREE NATION

Claimant

v.

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

Respondent

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

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

TO: Maurice Law  
Barristers & Solicitors  
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Counsel for the Claimant  
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## **I. Overview**

1. The Respondent, Her Majesty the Queen in right of Canada (“Canada”), is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. Canada acknowledges these principles as it attempts to assist the Specific Claims Tribunal (“Tribunal”) in adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada is open to using the processes of the Tribunal to facilitate the resolution of issues and to narrow the matters for determination.
3. Canada acknowledges that the Enoch Cree Nation is an adherent to Treaty No. 6. Pursuant to Treaty No. 6, Canada set aside approximately 44.5 square miles (or approximately 24,480 acres) of land for the Enoch Cree Nation as Indian Reserve No. 135 (“I.R. No. 135”).
4. The Enoch Cree Nation’s Declaration of Claim asserts that Canada breached its statutory and fiduciary duties, by taking a surrender of approximately 9,113 acres of I.R. No. 135 in 1902 (“1902 Surrender”) and expending certain monies for agricultural outfits and fencing supplies for the Enoch Cree Nation and its members.
5. Canada complied with its statutory duties under the *Indian Act* as well as its fiduciary duties and obligations regarding the 1902 Surrender.
6. Canada acknowledges that it expended monies from Capital Account No. 120, maintained by the Department of Indian Affairs for the Enoch Cree Nation (“Capital Account”), for agricultural outfits and fencing supplies for the Enoch Cree Nation and its members. However, the Governor in Council acted properly in doing so.

7. There was no breach of the *Indian Act* since the Governor in Council and the Enoch Cree Nation consented to and authorized the expenditures from the Capital Account as required by the *Indian Act*. Furthermore, in expending monies from the Capital Account, Canada did not breach any fiduciary duties.
8. In addition, the 1902 Surrender authorized the expenditures for agricultural outfits and fencing supplies from the Capital Account.

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

9. Canada admits that the requirements in paragraph 16(1)(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“SCTA”) are satisfied as pleaded in paragraphs 3 to 5 of the Declaration of Claim. In particular:
  - a. Enoch Cree Nation filed its specific claim with the Minister of Indian Affairs and Northern Development, now the Minister of Crown-Indigenous Relations (“Minister”), on or about February 28, 2007.
  - b. On September 13, 2011, Canada informed the Enoch Cree Nation that the Minister had decided not to accept the specific claim for negotiation.

## **III. Canada’s Position Regarding the Validity of the Claim (R. 42(b) and (c))**

10. Canada does not accept the validity of the claim set out in the Declaration of Claim.
11. Canada states that it complied with its statutory duties under the *Indian Act*, in force at the relevant time, as well as its fiduciary duties regarding the 1902 Surrender. In particular, Canada pleads and relies upon sections 38 and 39 of the *Indian Act*, RSC 1886, c 43 as amended (“1886 *Indian Act*”).
12. While Canada admits that it expended monies from the Capital Account, Canada states that the Governor in Council and Enoch Cree Nation consented to and

authorized such capital expenditures as required by the *1886 Indian Act*. In particular, Canada pleads and relies upon sections 70 and 139 of the *1886 Indian Act*.

13. Canada further states that the 1902 Surrender authorized the expenditure of monies from the Capital Account for agricultural outfits and fencing supplies for members of the Enoch Cree Nation.
14. Canada denies that it breached any statutory or fiduciary duties by expending monies from the Capital Account.
15. If the Tribunal should find that the claim of the Enoch Cree Nation is valid, Canada states that:
  - a. Paragraphs 20(1)(a) to (c) of the *SCTA* may provide the basis for the Tribunal to award compensation.
  - b. This would be subject, however, to any applicable deduction or set-off from such compensation calculated in accordance with subsection 20(3) of the *SCTA*.

**IV. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))**

***A. Pleading of Evidence***

16. In response to the whole of the Declaration of Claim, and to paragraphs 9 – 59 in particular, Canada states that the Enoch Cree 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 Declaration of Claim in a substantive manner.

***B. Enoch Cree Nation***

17. In response to paragraph 1 of the Declaration of Claim, Canada acknowledges that the Enoch Cree Nation is a “First Nation” within the meaning of section 2 of the *SCTA*, and a “band” within the meaning of subsection 2(1) of the *Indian Act*, RSC 1985, c I-5.
18. In response to paragraph 2 of the Declaration of Claim, Canada acknowledges that the Enoch Cree Nation is located in the Province of Alberta on I.R. No. 135, previously known as Stony Plain I.R. No. 135.

***C. Indian Reserve No. 135***

19. In response to paragraph 9 of the Declaration of Claim, Canada admits that:
  - a. In or about 1880, Edgar Dewdney, Commissioner of Indian Affairs (“Dewdney”) made arrangements with Tommy le Potac, also referred to as Tommy La Potac (“Tommy le Potac”) that if he could gather together a large number of “Indians” living around Edmonton, and claiming no Chief, then, Dewdney would recommend that Tommy le Potac be placed in charge of this group, and that this group be given a reserve.
  - b. In or about August 1883, the Acting Deputy of the Superintendent General of Indian Affairs reported to the Superintendent of Indian Affairs that (i) Dewdney was satisfied with the manner in which Tommy le Potac had carried out his share of the arrangement; and (ii) Dewdney recommended that the lands chosen by Tommy le Potac be set apart as a reserve.

20. In response to paragraph 10 of the Declaration of Claim, Canada admits that:
- a. In September 1884, John C. Nelson, Dominion Lands Surveyor, surveyed a reserve of 44.5 square miles (or approximately 28,480 acres) for the Enoch Cree Nation.
  - b. The reserve was situated on the left bank of the Saskatchewan River, about six miles south-west of Edmonton on the trail to Stony Plain.
  - c. The reserve was designated as I.R. No. 135 and was confirmed by Order in Council P.C. No. 1151 dated May 17, 1889.
21. In response to paragraph 11 of the Declaration of Claim, Canada acknowledges that when I.R. No. 135 was set aside, it contained good quality soil.

***D. Amalgamation Agreement with the Papaschase First Nation***

22. In response to paragraph 12 of the Declaration of Claim:
- a. Canada admits that on or about January 24, 1894, the Enoch Cree Nation entered into an amalgamation agreement with the former Papaschase First Nation. The amalgamation agreement provided, among other things, that:
    - i. The members of the former Papaschase First Nation and their descendants were admitted as members into the Enoch Cree Nation, and were entitled to an undivided interest in all land and other privileges; and
    - ii. In return, the members of the former Papaschase First Nation agreed that the Enoch Cree Nation and its descendants were entitled to a joint and undivided interest in all benefits that have

accrued, or may accrue, from the sale of the lands of the former Papaschase First Nation Indian Reserve No. 136 (“I.R. No. 136”).

- b. Canada states that, by 1902, the lands comprising the former I.R. No. 136 had been sold. The proceed from the sales of land were placed into the Enoch Cree Nation’s Capital Account.
- c. Canada acknowledges that in 1902, the Enoch Cree Nation’s Capital Account exceeded \$40,000.00.

***E. Response to the Assertions regarding the Laurier Years***

- 23. In response to paragraph 13 of the Declaration of Claim, Canada admits that the 1896 federal election resulted in the Liberals under Sir Wilfred Laurier (“Laurier”) being elected as the federal government. During Laurier’s 15-year tenure as Prime Minister, the economy experienced unprecedented growth and prosperity including expansion of immigration into the west.
- 24. In response to paragraphs 14 and 37 of the Declaration of Claim, Canada states that:
  - a. During the years 1896 to 1911, the Department of Indian Affairs was the responsibility of the Minister of the Interior who also held the position of Superintendent General of Indian Affairs.
  - b. In 1913, the Conservative Government under Sir Robert Borden commissioned a Winnipeg lawyer, Mr. Thomas Roberts Ferguson (“Ferguson”), to inquire into the administration of the public domain since the beginning of Laurier’s Liberal Government in 1896 (“Ferguson Inquiry”). The scope of the Ferguson Inquiry required Ferguson to report on all matters connected with the disposition of Dominion Lands; timber,

mineral and water lands and rights; and “Indian lands and Indian reserves”.

- c. The Ferguson Inquiry conducted investigations during a two-year period from 1913 to 1914.
- d. The reports from the Ferguson Inquiry (“Ferguson Reports”) were considered by the House of Common on April 14, 1915.
- e. Unfortunately, the Ferguson Reports were destroyed by fire in 1916.
- f. The Ferguson Inquiry did not investigate the Enoch Cree Nation’s 1902 Surrender and the sales of those surrendered lands.

25. In response to paragraph 15 of the Declaration of Claim, Canada admits that:

- a. Frank Oliver (“Oliver”) was elected as a member of Parliament in 1896.
- b. Oliver was the Minister of Interior and the Superintendent General of Indian Affairs for the years 1905 to 1911.
- c. Oliver co-founded the Edmonton Bulletin in 1880. Upon becoming a member of Parliament, he retained a monetary interest in the paper and wrote for it from time to time.

26. In response to paragraphs 16 and 17 and the first part of paragraph 21 of the Declaration of Claim, Canada states that:

- a. From 1890 until his death on July 10, 1898, the Indian Agent for the Edmonton Agency was C. de Cazes (“de Cazes”).
- b. Upon his passing, de Cazes was succeeded by James Gibbons (“Gibbons”).

*F. Events Prior to the 1902 Surrender*

27. In response to paragraphs 18 to 20 of the Declaration of Claim, Canada admits that:
- a. As early as February 1892, de Cazes reported that some settlers wanted to know whether the Enoch Cree Nation would allow a public road to cross its reserve.
  - b. On February 14, 1898, Oliver advised Sifton that he supported the resolution of the Stony Plain settlers asking that I.R. No. 135 be open for settlement. Oliver further remarked that the settlers were obliged to travel across I.R. No. 135 to reach the market and a part of the road was very bad.
  - c. On March 28, 1898, Secretary J. D. McLean (“McLean”) of the Department of Indian Affairs instructed de Cazes to ask the Enoch Cree Nation to consider surrendering certain lands around the northern boundary of I.R. No. 135 in order to best settle the difficulty experienced by the farmers crossing I.R. No. 135. The letter from McLean to de Cazes included a form of surrender in duplicate and authorization to take it in accordance with the provisions of the Indian Act.
  - d. On April 15, 1898, de Cazes informed McLean that he advised the principal men of the Enoch Cree Nation of the possibility of agreeing to a surrender and asked them to hold a meeting between themselves and let him know what they decided.
  - e. De Cazes was presented with a statement made on behalf of the Council of the Enoch Cree Nation stating that they do not wish to sell the land.
  - f. In his letter to McLean, de Cazes asked to write a few words to the Department of Indian Affairs regarding satisfactory arrangements that

could be made for the settlers crossing I.R. No. 135 without infringing on the rights of the Enoch Cree Nation.

28. In response to paragraphs 22 to 24 of the Declaration of Claim, Canada states that in or about 1898-1899, the Department of Indian Affairs declined to approach the Enoch Cree Nation again about a possible surrender of a portion of I.R. No, 135, but did make arrangements to have a road opened across I.R. No. 135. The survey of the road was completed in July 1899.
29. In response to paragraph 25 of the Declaration of Claim, Canada admits that in 1900, government officials proposed fencing I.R. No. 135 to stop settlers' cattle and horses from grazing on I.R. No. 135. The proposal included the costs of fencing to be taken from the Enoch Cree Nation's Capital Account.
30. In response to paragraph 26 of the Declaration of Claim, Canada admits that:
  - a. On April 15, 1901, McLean wrote to the Commissioner of Public Works of the Government of the North-West Territories to inquire whether fencing the boundaries of I.R. No. 135 would interfere with any proposed or existing roads.
  - b. On April 25, 1901, the Deputy Commissioner of Public Works of the Government of the North-West Territories responded to McLean advising him that the only road that would be affected was the one that had been surveyed in 1899 and crossed a portion of I.R. No. 135.
  - c. The question arose as to who would pay for the fencing on both sides of the road through I.R. No. 135.
  - d. In or about May 1901, Deputy Superintendent General of Indian Affairs James Smart concluded that the road should be surveyed and that the Lieutenant Governor in Council ought to make a formal application to

place the road under the control of the Government of the North-West Territories, including an undertaking to construct and maintain the fences along the road allowances.

- e. On June 17, 1901, the Deputy Commissioner of Public Works responded to McLean advising him that the Government of the North-West Territories was not in a position to bear the costs of constructing the fences.
- f. On November 23, 1901, Chief Surveyor Bray wrote to McLean inquiring whether the Enoch Cree Nation would object to surrendering the right of way if the fencing costs were paid out of the Enoch Cree Nation's Capital Account.
- g. In a letter in December 1901, Gibbons wrote to McLean about the question of fencing I.R. No. 135. If I.R. No. 135 should be fenced, he proposed, among other things, that:
  - i. a surrender and sale of the road allowance and the balance of the 14 square miles at the north end of I.R. No. 135 be carried out as it would allow the Enoch Cree Nation to fence I.R. No. 135; and
  - ii. from the capital proceeds, a good outfit of horses, harness and machinery be purchased for the Enoch Cree Nation.

### ***G. 1902 Surrender***

- 31. In response to paragraph 27 of the Declaration of Claim, Canada admits that:
  - a. On December 31, 1901, Indian Commissioner David Laird wrote to McLean supporting Gibbons's idea of a surrender of the road allowance

and the 14 square miles of land lying north of it to solve the difficulty with fencing the road allowance.

- b. On January 9, 1902, McLean instructed Gibbons to ask the Enoch Cree Nation to consider surrendering the portion of I.R. No. 135 lying north of the road allowance. The letter included a form of surrender in duplicate and authorization to take it in accordance with the provisions of the *Indian Act*.
- c. In this letter, McLean further approved of Gibbons's proposal that the remaining portions of I.R. No. 135 should be fenced and that the Enoch Cree Nation should be given a good outfit from the sale proceeds.

32. In response to paragraphs 28, 29, 30 and the latter part of paragraph 21 of the Declaration of Claim, Canada admits that:

- a. On January 20, 1902, the Enoch Cree Nation surrendered approximately 9,113 acres of land of I.R. No. 135 that lay north of the south limit of the road allowance.
- b. The conditions of the 1902 Surrender set out by the Enoch Cree Nation included that:
  - i. the Enoch Cree Nation be allowed to expend \$10,000 from its Capital Account:
    - 1. on the purchase of farming implements and horses;
    - 2. fencing the remainder of I.R. No. 135; and
    - 3. providing an outfit of clothing for the aged and destitute of the Enoch Cree Nation;

- ii. the Enoch Cree Nation compensate the member who was a farmer, residing on the surrendered portion of I.R. No. 135, \$200.00 for his improvements on his property; and
        - iii. the survey of land be completed quickly so the Enoch Cree Nation could erect the fence on the north side of the I.R. No. 135.
    - c. The 1902 Surrender also stipulated that money received from the sale was to be placed to the credit of the Enoch Cree Nation with the interest on the sale money to be paid to the members of the Enoch Cree Nation and their descendants annually or semi-annually at the discretion of the Department of Indian Affairs.
    - d. The 1902 Surrender was signed by 14 members of the Enoch Cree Nation and their signatures were witnessed by Agency Clerk Henry A. Carruthers and Agency Interpreter John Foley.
- 33. In response to paragraph 31 of the Declaration of Claim, Canada admits that Frère R. P. Vegreville did not attend the surrender meeting that occurred on January 20, 1902.
- 34. In response to paragraph 32 of the Declaration of Claim, Canada admits that:
  - a. The surrender conditions were to be satisfied with expenditures from the Enoch Cree Nation's Capital Account.
  - b. Materials for the fencing of I.R. No. 135 were purchased in March and April of 1902 and charged to the Enoch Cree Nation's Capital Account.

35. In response to paragraph 33 of the Declaration of Claim, Canada states that:
- a. As part of Gibbons's report regarding the 1902 Surrender, he included a list of articles to be given to the Enoch Cree Nation out of the proceeds of the sale of the fourteen square miles of I.R. No. 135.
  - b. In his report, Gibbons advised that the Enoch Cree Nation urged that the purchase of farming implements, horses and provision of an outfit of clothing for the aged and destitute be taken from the Capital Account and that the monies realized from the sale could be placed in their Capital Account.
  - c. On February 13, 1902, Gibbons obtained the consent of 17 members of the Enoch Cree Nation to take the funds from its Capital Account to pay for the expenditures.
36. In response to paragraph 34 of the Declaration of Claim, Canada states that:
- a. On June 6, 1902, Gibbons wrote to McLean asking for authority to purchase additional articles for three more members of the Enoch Cree Nation.
  - b. On June 16, 1902, McLean gave Gibbons authority to purchase the additional articles provided that it did not exceed the originally approved amount of \$10,000.
37. In response to paragraph 35 of the Declaration of Claim, Canada states that:
- a. On February 5, 1902, McLean notified Gibbons that the Department of Indian Affairs approved of the Enoch Cree Nation's conditions of the 1902 Surrender.

- b. On February 14, 1902, an affidavit was sworn in Edmonton by Gibbons and Chief Mista Jim of the Enoch Cree Nation before S. LaRue, Justice of the Peace for the North-West Territories.
  - c. The 1902 Surrender was approved by Order in Council P.C. No. 515 on April 1, 1902.
38. In response to paragraphs 36, 38 and 39 of the Declaration of Claim, Canada states that:
- a. The sale by tender of the lands surrendered by the 1902 Surrender was approved by Order in Council P.C. 1434 dated October 5, 1902.
  - b. The Notice of Tenders provided a deadline for submissions by noon on Wednesday, December 3, 1902.
  - c. The sale of the surrendered lands (including the payment for the surrendered lands) was completed by 1906.

#### ***H. Surrender Requirements and the Indian Act***

39. Sections 38 and 39 of the *1886 Indian Act* were in force at the time of the 1902 Surrender and set out the requirements governing surrenders of reserve lands.
40. In response to paragraphs 40(a), 41 and 42 of the Declaration of Claim, Canada states that it complied with the requirements of the *1886 Indian Act* and that the 1902 Surrender is valid and legal.
41. As previously pleaded in paragraph 37(b) of the Response, an affidavit was sworn in Edmonton on February 14, 1902 by Gibbons and Chief Mista Jim of the Enoch Cree Nation before S. LaRue, Justice of the Peace for the Northwest Territories. The affidavit certified that:

- a. The 1902 Surrender was assented to by Chief Mista Jim and a majority of the male members of the Enoch Cree Nation of the full age of 21 years present at the meeting.
- b. The assent was given at a meeting of the Enoch Cree Nation summoned for the purpose of the 1902 Surrender and according to the Enoch Cree Nation's rules.
- c. It was held in the presence of Gibbons, an officer authorized by the Superintendent General of Indian Affairs, to attend this meeting.
- d. Those present and voting at the meeting were members of the Enoch Cree Nation that habitually resided on I.R. No 135 and had interest in the land mentioned in the 1902 Surrender.

***I. Response to the Asserted Pre-Surrender Fiduciary Duties***

42. In response to paragraphs 40(b), 43 to 52 of the Declaration of Claim, Canada denies that it breached its pre-surrender fiduciary duties as:
  - a. Canada informed the Enoch Cree Nation of the terms and consequences of the surrender.
  - b. Canada was not required to withhold its consent to the 1902 Surrender as the terms of the 1902 Surrender were not foolish or improvident, and did not amount to exploitation.
  - c. Canada did not engage in tainted dealings.
  - d. The duty to minimally impair arises in situations where Canada expropriates reserve lands, or consents to the expropriation or taking of reserve lands. Such a duty does not arise in the context of a surrender of

reserve lands. Thus, there has not been a breach of any such duty in the circumstances of this matter.

43. In further response to paragraphs 40(b), 43 to 52 of the Declaration of Claim, Canada states that:

- a. On January 23, 1902, Gibbons reported to McLean that he called the Enoch Cree Nation together and had an all-day talk with them, after which the Enoch Cree Nation signed the 1902 Surrender, but on certain conditions.
- b. Gibbons considered that the Enoch Cree Nation's conditions of the 1902 Surrender were fair and reasonable.

44. As previously pleaded in paragraph 32(b) of the Response, the Enoch Cree Nation's conditions of the 1902 Surrender included:

- a. The entire I.R. No. 135 be fenced.
- b. The working members of the Enoch Cree Nation to receive an outfit to start them farming (implements to be purchased from Enoch Cree Nation's Capital Account to be reimbursed from the sale of the surrendered land).
- c. Elderly and destitute members to receive one outfit of warm clothing.
- d. \$200.00 in compensation be provided to the one member who resided in the area surrendered.

45. In response to paragraphs 45 to 47 of the Declaration of Claim, Canada states that the Enoch Cree Nation asked Gibbons to hold on to its consent until Gibbons received confirmation that the Department of Indian Affairs agreed to the conditions.

46. As previously pleaded in paragraph 37(a) and (b) of the Response, Canada states that:
- a. On February 5, 1902, McLean notified Gibbons that the Department of Indian Affairs approved of the Enoch Cree Nation's conditions of surrender.
  - b. On February 14, 1902, an affidavit was sworn in Edmonton by Gibbons and Chief Mista Jim of the Enoch Cree Nation before S. LaRue, Justice of the Peace for the Northwest Territories.
47. Furthermore, the 1902 Surrender was implemented in accordance with its terms and conditions.

***J. Management of the Enoch Cree Nation's Capital Account***

48. Section 70 of the *1886 Indian Act* provided the Governor in Council authority to direct how the Enoch Cree Nation's funds could be invested and managed and how payments could be made. Section 139 of the *1886 Indian Act* qualified and limited section 70.
49. In response to paragraphs 40(c), 53 to 56 of the Declaration of Claim, Canada states that it complied with the requirements of the *1886 Indian Act*. The Governor in Council and the Enoch Cree Nation consented to and authorized the expenditures for agricultural outfits and fencing from the Enoch Cree Nation's Capital Account as required by section 139 of the *1886 Indian Act*.
50. In further response to paragraphs 40(c), 53 to 56 of the Declaration of Claim, Canada states that the expenditures for agricultural outfits and fencing improved I.R. No. 135 and led to noticeable progress for the Enoch Cree Nation and its members.

51. On July 8, 1902 Gibbons's Report for the Edmonton Agency advised that the Enoch Cree Nation was engaged in agricultural activities and that progress and improvements were noticeable on the reserve.
52. In still further response to paragraphs 40(c), 53 to 56 and in response to paragraphs 57 to 59 of the Declaration of Claim, Canada states that it did not breach any fiduciary duties in making these expenditures for agricultural outfits and fencing from the Enoch Cree Nation's Capital Account.
53. As previously pleaded in paragraph 35(c) of the Response, Gibbons obtained the consent of 17 members of the Enoch Cree Nation to take the funds from its Capital Account to pay for these expenditures.
54. Furthermore, the 1902 Surrender authorized these expenditures from the Enoch Cree Nation's Capital Account.

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

*General*

55. Canada relies upon the facts set out under heading "IV. Allegations of Fact – Declaration of Claim".

*Treaty No. 6*

56. In 1876, Canada entered into Treaty No. 6 with certain "Plain and Wood Cree and other Tribes" in what is now central Saskatchewan and Alberta.
57. In or about 1880, Dewdney made arrangements with Tommy le Potac that: if he could gather together a large number of "Indians" living around Edmonton, and claiming no Chief; then, Dewdney would recommend that Tommy le Potac be placed in charge of this group, and this group would be given a reserve.

58. In or about August 1883, the Acting Deputy of the Superintendent General of Indian Affairs reported to the Superintendent General of Indian Affairs that:
  - a. Dewdney was satisfied with the manner in which Tommy le Potac had carried out his share of the arrangement.
  - b. Dewdney recommended that the lands chosen by Tommy le Potac be set apart as a reserve.
59. In response, the Department of Indian Affairs agreed that the reserve should be surveyed.
60. In September 1884, John C. Nelson, Dominion Lands Surveyor, surveyed a reserve of 44.5 square miles (or approximately 28,480 acres) of land located about six miles south-west of Edmonton on the trail to Stony Plain.
61. These lands were confirmed as I.R. No. 135 set aside for the Enoch Cree Nation by Order in Council P.C. 1151 dated May 17, 1889.
62. In accepting reserve lands and the other benefits of Treaty No. 6, Canada states that the Enoch Cree Nation adhered to Treaty No. 6 by way of its conduct.

### ***1902 Surrender***

63. On January 9, 1902, McLean instructed Gibbons to ask the Enoch Cree Nation to consider surrendering the portion of I.R. No. 135 lying north of the road allowance. The letter included a form of surrender in duplicate and authorization to take it in accordance with the provisions of the *Indian Act*.
64. On January 20, 1902, the Enoch Cree Nation surrendered approximately 9,113 acres of land of I.R. No. 135 that lay north of the south limit of the road allowance, but on certain conditions.

65. The Enoch Cree Nation's conditions of the 1902 Surrender included that:
  - a. The Enoch Cree Nation be allowed to expend \$10,000.00 from its Capital Account on the purchase of farming implements and horses; fencing the remainder of I.R. No.135 and providing an outfit of clothing for the aged and destitute.
  - b. The Enoch Cree Nation compensate the member who was a farmer, residing on the surrendered portion of I.R. No. 135, \$200.00 for his improvements on his property.
66. The Department of Indian Affairs approved of the Enoch Cree Nation's conditions of the 1902 Surrender on February 5, 1902.
67. The 1902 Surrender Affidavit was sworn by Chief Mista Jim and Gibbons on February 14, 1902 before S. LaRue, Justice of the Peace for the North-West Territories. The 1902 Surrender was approved on April 1, 1902 by Order in Council P.C. No. 515.
68. The surrender conditions of the 1902 Surrender were to be satisfied with expenditures from the Enoch Cree Nation's Capital Account.
69. Materials for the fencing of I.R. No. 135 were purchased in March and April of 1902 and charged to the Enoch Cree Nation's Capital Account.
70. The sale by tender of the lands surrendered by the 1902 Surrender was approved by Order in Council P.C. 1434 on October 5, 1902.
71. The sale of the surrendered lands (including the payment for the surrendered lands) was completed by 1906.

**VI. Relief (R. 42(f))**

72. Canada seeks the following relief:

- a. Dismissal of the claim in its entirety (including the claim for costs on a substantial indemnity basis).
- b. In the alternative, if the Tribunal finds Canada liable to pay compensation to the Enoch Cree Nation as alleged, or at all, then Canada relies upon subsection 20(3) of the *SCTA* in order to claim a deduction or set-off of the value of any benefit received by the Enoch Cree Nation from such compensation deemed to be owed.
- c. Costs.
- d. Such further relief as Canada may request and this Tribunal deems just.

**VII. Communication (R. 42(g))**

73. Canada's address for the service of documents is:

Department of Justice Canada  
Prairie Region (Edmonton Office)  
300 EPCOR Tower, 10423 – 101 Street  
Edmonton, Alberta T5H 0E7  
Attention: Tanya Knobloch / Shaun Mellen

74. The facsimile number for service of documents on Canada is 780-495-2964.

75. The e-mail addresses for the service of documents on Canada are:

[tanya.knobloch@justice.gc.ca](mailto:tanya.knobloch@justice.gc.ca)  
[shaun.mellen@justice.gc.ca](mailto:shaun.mellen@justice.gc.ca)

**DATED** at the City of Edmonton, in the Province of Alberta, this 4th day of September 2020.

*Tanya Knobloch* "digitally signed"

*Shaun Mellen* "digitally signed"

**ATTORNEY GENERAL OF CANADA**

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