

FILE NO.: SCT-7001-18
DATE: 20190515

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
KANAKA BAR INDIAN BAND)	
)	Darwin Hanna and Kirk Gehl, for the
)	Claimant
Claimant)	
)	
– and –)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	James M. Mackenzie and James Rendell, for
Affairs and Northern Development)	the Respondent
)	
)	
Respondent)	
)	
)	
)	
)	

ORDER

Honourable William Grist

WHEREAS the Parties have reached an agreement on the validity phase of this Claim and do not require a hearing;

AND WHEREAS the Parties have consented to an Order for the resolution of all issues of validity of the Claim as follows:

- a. The Respondent has admitted liability with respect to this Claim as follows:

Canada's transfers of the right-of-way lands to the Canadian Pacific Railway were made without statutory authority, and constituted an illegal disposition of reserve land;

To the extent that Canada purported to grant a wider right-of-way than was permissible under section 9 of the *Consolidated Railway Act*, the transfer was contrary to section 9, and constituted a breach of Canada's fiduciary duty to act in the best interests of the First Nation; and,

Canada breached a fiduciary duty when it failed to consider if the First Nation was entitled to compensation for injurious affection, loss of access to fisheries, or other damages known to or foreseeable to Canada.

b. The Parties agree that, by virtue of this admission, all issues of validity have been fully and finally resolved as between them; and,

c. The Parties have indicated that they intend to negotiate a settlement on compensation for this Claim.

THE TRIBUNAL ORDERS, BY CONSENT, THAT:

[1] The Claim is found valid under paragraphs 14(1)(b), (c), and (d) of the *Specific Claims Tribunal Act*:

Canada's transfers of the right-of-way lands to the Canadian Pacific Railway were made without statutory authority, and constituted an illegal disposition of reserve land;

To the extent that Canada purported to grant a wider right-of-way than was permissible under section 9 of the *Consolidated Railway Act*, the transfer was contrary to section 9, and constituted a breach of Canada's fiduciary duty to act in the best interests of the Claimant; and,

Canada breached a fiduciary duty when it failed to consider if the Claimant was entitled to compensation for injurious affection, loss of access to fisheries, or other damages known to or foreseeable to Canada.

[2] The resolution of issues of validity is made as if upon a full hearing of the Claim at the validity phase of the proceeding and a decision of the Tribunal on the merits;

[3] The Parties are granted leave, in their discretion, to amend the pleadings to reflect the foregoing terms of their agreement on validity; and,

[4] Compensation is to be assessed under paragraphs 20(1)(c), (g), and (h) of the *Specific Claims Tribunal Act*.

WILLIAM GRIST

Honourable William Grist