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CITATION: 2026 SCTC 2
DATE: 20260306

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:

LUCKY MAN CREE NATION

Claimant (Applicant)

– and –

HIS MAJESTY THE KING IN RIGHT OF
CANADA

As represented by the Minister of Crown-
Indigenous Relations

Respondent (Respondent)

Steven Carey, Aron Taylor and Paige
Thomas, for the Claimant (Applicant)

James Olchoway and Meghan Shewchuk, for
the Respondent (Respondent)

HEARD: January 29, 2026

REASONS ON APPLICATION

Honourable Victoria Chiappetta, Chairperson

NOTE: This document is subject to editorial revision before its reproduction in final form.

Cases Cited:

R v Krause, [1986] 2 SCR 466; *Louis Dreyfus Company Canada ULC v. Canada National Railway Company*, 2024 FC 832; *Merck-Frosst v Canada (Health)*, 2009 FC 914; *R v Mohan*, [1994] 2 SCR 9; *Amgen Canada Inc v Apotex Inc*, 2016 FCA 121; *Merck Sharpe & Dohme Corp v Pharmascience Inc*, 2021 FC 1456; *Bauer Hockey Limited v Sport Maskas Inc*, 2020 FC 212; *Halford v Seed Hawk Inc*, 2003 FCT 141; *R v Natsis*, 2018 ONCA 425.

Statutes and Regulations Cited:

Specific Claims Tribunal Rules of Practice and Procedure, SOR/2011-119, rr 29, 104.

Specific Claims Tribunal Act, SC 2008, c 22, s 13.

Canada Evidence Act, RSC 1985, c C-5, s 30.

Federal Courts Rules, SOR/98-106, rr 274, 278.

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I. INTRODUCTION

[1] The Claimant, Lucky Man Cree Nation, has brought an Application for Leave and Notice of Application (Application) to admit new evidence after the close of expert evidence and after the filing of the Respondent’s final written submissions on the merits of the Claim.

II. FACTS AND PROCEDURAL HISTORY

[2] An oral submissions hearing was scheduled to take place on November 27–28, 2025. In preparation for the hearing, the Claimant filed its written submissions on September 26, 2025 (Claimant’s final written submissions), and the Respondent filed its written submissions on October 24, 2025 (Respondent’s final written submissions).

[3] In a letter filed on November 4, 2025, the Claimant informed the Tribunal that the Respondent objected to footnote 7 of the Claimant’s final written submissions, which referenced “Information collected from Natural Resources Canada, 1879-1884 Reserve Boundary Survey Search Results” (referred to as “the NRCAN Results”)—a document that had not been filed as an exhibit with the Tribunal. The Claimant sought direction from the Tribunal regarding the best way to introduce this document into the evidentiary record.

[4] In a letter filed on November 6, 2025, the Respondent informed the Tribunal that the new document had only been provided to the Respondent on October 29, 2025—five days after the Respondent had filed its final written submissions. As a result, the Respondent objected to including the new document in the Common Book of Documents. The Respondent argued that the information was inadmissible and irrelevant to the issues at hand, and that introducing such evidence at this late stage of the proceeding was procedurally unfair, as it prevented the Respondent from cross-examining the document’s creator to assess its content or reliability, or from considering the document before filing its final written submissions.

[5] Following this correspondence, on November 6, 2025, the Tribunal issued a Direction vacating the hearing dates set aside for the oral submissions hearing and inviting the Parties to provide their availability for an application hearing on the admissibility of the new document submitted by the Claimant.

[6] On November 7, 2025, the Claimant filed another letter with the Tribunal requesting that

the oral submissions hearing proceed as scheduled, referencing the many years it had already been waiting for a hearing on the merits, and requesting that any issues regarding admissibility, reliability and necessity of the new document be addressed at the start of the oral submissions hearing.

[7] On the same day, the Claimant filed reply written submissions on the merits of the matter, along with an affidavit of Elizabeth Carson, which contained two exhibits: Exhibit A, the NRCAN Results document which the Respondent objected to, and Exhibit B, a Specific Claims Branch status report on specific claims (the status report).

[8] On November 10, 2025, the Tribunal responded to the Claimant's letter, advising that its request to hear arguments on admissibility, reliability and necessity of the new document at the start of the oral submissions hearing was denied. The Tribunal again invited the Parties to prepare for a hearing on the admissibility of the new document.

[9] On November 12, 2025, the Respondent wrote to the Tribunal addressing a few matters, including its objection to the Claimant filing both exhibits to the affidavit of Elizabeth Carson. The Respondent also noted that the Claimant had cited a report of Dr. Peggy Martin-McGuire that was not among the expert reports prepared and filed in this proceeding and was therefore not in evidence before the Tribunal. The Respondent expressed its desire to cross-examine the affiant through whom the Claimant is seeking to have the evidence admitted.

[10] On November 14, 2025, as directed by the Tribunal, the Claimant filed its Application pursuant to Rule 29 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119 [*SCT Rules*] seeking to introduce, admit and rely upon evidence after the close of evidence.

[11] On November 19, 2025, the Claimant filed a second affidavit of Elizabeth Carson. This affidavit appended, as Exhibit A, a report by Dr. Martin-McGuire titled "First Nation land surrenders on the Prairies, 1896-1911," commissioned by the Indian Claims Commission (the ICC Report), and, as Exhibit B, an excerpt from the executive summary of that report retrieved from the Government of Canada Publications website (the excerpt).

[12] On December 1, 2025, the Respondent filed its "Response to Application for Leave and Notice of Application."

[13] The Claimant filed its written submissions on the Application on December 22, 2025 (Claimant’s Application submissions), and the Respondent filed the same on January 6, 2026 (Respondent’s Application submissions). The Claimant filed reply submissions on January 14, 2026.

[14] The hearing of the Application was held virtually on January 29, 2026. At the outset, the Tribunal explored the possibility whether the Parties could reach an agreement to avoid any further delay in this matter—an agreement that would allow the Respondent an opportunity to prepare a sur-reply and to cross-examine the authors of the evidence, in writing, for the purposes of assessing weight and reliability of the new documents for the final determination of the matter. The Parties could not come to an agreement and chose to proceed with the Application.

III. PARTIES’ POSITIONS

A. The Claimant’s Position

[15] The Claimant in its Application submissions seeks to admit the two affidavits of Elizabeth Carson, including the four documents attached as exhibits (collectively, the proposed reply evidence).

[16] The documents in question are:

- a. The Natural Resources Canada survey plans search results, showing the number of reserves surveyed in Canada from 1879–1884—Exhibit A to Elizabeth Carson’s first affidavit (the NRCAN Results);
- b. A status report on specific claims retrieved from the Government of Canada Specific Claims Reporting Centre, which includes the Saskatchewan reserves referred to in the ICC Report —Exhibit B to Elizabeth Carson’s first affidavit (the status report);
- c. A report by Dr. Martin-McGuire titled “First Nation land surrenders on the Prairies, 1896-1911,” published by the ICC in 1998—Exhibit A to Elizabeth Carson’s second affidavit (the ICC Report); and

- d. An excerpt from the executive summary of the ICC Report referenced above, retrieved from the Government of Canada Publications website—Exhibit B to Elizabeth Carson’s second affidavit (the excerpt).

[17] Generally, the Claimant argues that each of these documents is directly relevant and responsive to the issues in the Claim, either as set out in the Agreed Statement of Issues or issues raised by the Respondent in its final written submissions, thus falling within the scope of the present matter.

[18] It submits that these types of records, which are publicly available on Government of Canada websites, require no specialized expertise to understand and are routinely relied upon by parties in proceedings before the Tribunal. They are matters of public record so open and notorious that the Tribunal may take judicial notice of them.

[19] The Claimant reminds the Tribunal of its broad discretion to admit evidence under paragraph 13(1)(b) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [SCTA], its role in promoting reconciliation between First Nations and the Crown, as well as its mandate to provide a just, timely and efficient determination of the claims before it.

[20] Regarding the NRCAN Results specifically, the Claimant argues that they constitute relevant evidence because they demonstrate that the Respondent surveyed 517 reserves for First Nations between 1879–1884. This, it says, bears directly on a central issue in this Claim: whether the Respondent had the capacity and resources to survey reserves during the relevant period. It further argued that the NRCAN Results directly confirm that the Respondent did possess the capacity and resources to survey a reserve for the Claimant at the time of adhesion in 1879, and when the Claimant specifically requested a reserve in 1880, 1882 or 1883.

[21] The Claimant argues that the NRCAN Results originate from a federal repository of legal survey records maintained and published by the Government of Canada for public use and are intrinsically reliable. If such records were not sufficiently accurate and reliable, their publication would amount to a misrepresentation to the public and would be inconsistent with the government’s duty to maintain accurate public records.

[22] Regarding the ICC Report, the Claimant argues that this report was commissioned by the

ICC—the predecessor of this Tribunal—in response to an investigation on the number of surrenders that occurred between 1896 and 1911. The ICC Report remains publicly accessible through the Government of Canada Publications website, further attesting to its reliability. Further, the Claimant argues that the ICC Report is necessary as it provides the Tribunal with historical context in relation to the degree of control exercised by First Nations over their reserve lands during the relevant period.

[23] It submits that the Respondent’s case has made this relevant because it is almost entirely premised on a novel legal theory that the Treaty 6 reserve creation process was an intricate sequence of events that placed a significant degree of responsibility on signatory First Nations, and that those First Nations had a large degree of autonomy over the reserve creation process and their reserve lands.

[24] The Claimant argues that the ICC Report is relevant context as it shows that “21% of all reserve lands on the Prairies were ‘surrendered’ back to the Crown between 1897-1911” (Claimant’s Application submissions at para. 26). In the Claimant’s view, this statistic casts doubt on the Respondent’s allegation that First Nations exercised a large degree of autonomy and control over their reserve lands.

[25] The Claimant argues that the status report is inherently reliable. It is generated from a federal database of specific claims that is maintained and published by the Government of Canada and expressly intended for public use. It is a document routinely used by parties in the specific claims process.

[26] The Claimant’s position is that this status report has been made relevant in this proceeding because the Respondent has elected to advance a case premised on the argument that First Nations had a large degree of autonomy and control over their reserve lands in the late 1800s and early 1900s. The status report demonstrates that 67% of the prairie land “surrenders” that occurred in the 14-year period from 1897 to 1911 have been filed and resolved as specific claims, with the remaining surrenders in active litigation or negotiation.

[27] The Claimant argues that records made in the ordinary course of government operations possess inherent indicia of reliability. They are created by public officials under statutory duties

of accuracy and accountability and are routinely relied upon by other government bodies and the public. Courts have repeatedly recognized this reliability. The Claimant contends that government documents such as these are admissible under section 30 of the *Canada Evidence Act*, RSC 1985, c C-5, as business records and, by extension, qualify as an exception to the hearsay rule. The documents at issue consist of official government records created and maintained in the ordinary course of government business. Their statutory recognition, routine creation, public accessibility, and authors' professional duties all combine to provide a strong circumstantial guarantee of reliability.

[28] The Claimant also underlines that the Tribunal has recognized that “it is well established that courts may take judicial notice of historical facts and rely on their own historical knowledge and research” (Claimant’s Application submissions at para. 36, citing *Akisiq’nuq First Nation v Her Majesty the Queen in Right of Canada*, 2016 SCTC 2 at para. 17).

[29] Finally, the Claimant argues that the Respondent is not prejudiced by the inclusion of this evidence, that it will have time to respond and that it can still cross-examine the affiant if desired. In the alternative, the Claimant requests that the Tribunal take judicial notice of three sets of facts pulled from the documents it seeks to introduce into evidence.

B. The Respondent’s Position

[30] The Respondent, for its part, argues that the Claimant seeks to improperly split its case by filing new evidence after the close of evidence and after the filing of final written submissions. Citing *R v Krause*, [1986] 2 SCR 466 [*Krause*], the Respondent submits that case-splitting is a practice where a plaintiff will only put in part of its evidence, close its case and—after the defence is complete—add further evidence to bolster the position originally advanced, thereby impeding the responding party from preparing its defence on the basis of a full case.

[31] It submits that the rule against case-splitting prohibits the party who called evidence first from calling further evidence to support its case after the responding party has called its evidence. A plaintiff must be diligent and exhaustive in calling its evidence first so that the responding party, as a matter of fairness, knows from the start the full case it must meet. This rule is intended to prevent the plaintiff from adding further evidence to bolster its case in chief after the responding party has made its defence.

[32] The Respondent argues that the exception to the rule against case-splitting is proper reply evidence, which can be admissible when it meets a threshold level of necessity and significance. Specifically, it claims that proper reply evidence critiques, rebuts, challenges, refutes or disproves the responding party's unforeseeable evidence. It does not simply repeat or reinforce the evidence initially filed. If the reply evidence is responsive, then the inquiry as to its admissibility turns to whether it could have been anticipated as relevant at an earlier date. Proposed reply evidence introduced simply to strengthen one's case, but that should have been included initially, before the close of the defence, does not meet this requirement.

[33] It argues that for a plaintiff to be authorized to file reply evidence, a decision-maker must consider the following factors:

- (1) whether the reply evidence serves the interests of justice;
- (2) whether the further evidence assists the Court in making its determination on the merits;
- (3) whether granting the motion will cause substantial or serious prejudice to the other side; and
- (4) whether the reply evidence was available and/or could not be anticipated as being relevant at an earlier date. [Respondent's Application submissions at para. 25, citing *Louis Dreyfus Company Canada ULC v Canadian National Railway Company*, 2024 FC 832 at para. 19 [*Louis Dreyfus*], and *Merck-Frosst v Canada (Health)*, 2009 FC 914 at para. 10]

[34] The Respondent argues that the Claimant's proposed reply evidence fails to meet the threshold for admitting reply evidence and its admission would be contrary to the interests of justice. It contends that the proposed reply evidence is inadmissible on its face because it is either redundant or irrelevant to the key disputed issues before the Tribunal and thus will not assist the Tribunal in its final determination.

[35] Regarding the NRCAN Results document, the Respondent argues that the Parties have already filed comprehensive evidence addressing surveys and surveying in the historical context of the case, and that the information the Claimant seeks to have admitted into evidence is potentially misleading as it concerns different treaty areas, is not accompanied by contextual or interpretive commentary from an expert, and thus is dubiously relevant or reliable.

[36] Regarding the ICC Report, the Respondent argues that it does not relate to the issues before

the Tribunal, but instead concerns unlawful surrenders, which are categorically different from the issues raised in this Claim. It submits that although this document may have marginal relevance to the Claimant's assertion about First Nations' control over reserve lands, that assertion is irrelevant to the issue of the historical reserve creation process for the Claimant.

[37] The Respondent insists on the prejudice it would sustain if the new documents were allowed into the evidentiary record at this late stage, or if the Tribunal took judicial notice of the three statistics that the Claimant presents as facts (alleged statistics). It argues that the Parties took many steps over several years to complete the evidentiary record, including exchanging relevant documents, filing various historical expert reports, and examining and cross-examining experts. It submits that the Claimant failed not only to file its new documents on time, but it adduced them **after** final written submissions were already filed. This occurred even though these documents were available before the Claim was initiated, and apparently in the Claimant's possession, at least in part, before it filed its own final written submissions.

[38] The Respondent argues that the Claimant could have mitigated the prejudice associated with the late service of these documents but did not. The fact that it included some of the documents in its proposed Book of Documents on October 23, 2025, is irrelevant, as they should have been added much earlier, and at least in the Claimant's final written submissions filed September 26, 2025.

[39] The Respondent insists that its final written submissions, filed October 24, 2025, did not raise issues that were unforeseeable to the Claimant or "almost entirely premised on a novel theory" (Respondent's Application submissions at para. 39). It submits that it clearly bases its position on reserve creation in the context of the historical documents, expert historical reports and relevant jurisprudence.

[40] The Respondent argues that the Claimant's assertion of a "novel claim" is "indefensible and unpersuasive" (Respondent's Application submissions at para. 41). It argues that the sources that the Claimant cites in support of this "novel claim" allegation are distinguishable from the case at hand, as they relate primarily to Treaty 4 First Nations rather than reserve creation under Treaty 6.

[41] Further, the Respondent argues that the Claimant had ample time to seek leave to file additional evidence prior to the Respondent's filing of its final written submissions on October 24, 2025. The Claimant chose not to do so, opting to instead split its case in a procedurally unfair manner mere weeks before the scheduled oral submissions hearing. The Claimant's deliberate decision not to adduce the proposed reply evidence, which it viewed as relevant to the issues in the Claim, until **after** both the close of evidence and the Respondent's filing of its final written submissions, is prejudicial to the Respondent and ought not be permitted.

[42] Additionally, the Respondent argues that the Claimant has misconstrued the *Canada Evidence Act* as granting the right to file evidence where it would otherwise be impermissible hearsay. It argues that the new documents are not business records under the *Canada Evidence Act*.

[43] In the current circumstances, the Respondent argues that the three alleged statistics do not meet the threshold for judicial notice: they are not so widely known and accepted in the community that they cannot be subject to reasonable questioning; nor can they be readily determined or verified by resorting to sources whose accuracy can reasonably be ascertained.

[44] The Respondent submits that the Claimant is belatedly attempting to split its case to fill perceived evidentiary gaps. The proposed facts constitute narrow statistical observations attributed to either specific historical NRCAN searches or research conducted in a separate legal proceeding about twenty-seven years ago.

[45] In addition, it contends that the ICC Report, an extensive expert report prepared by the Claimant's expert historian about twenty-seven years ago, in a different context, is fundamentally inadmissible pursuant to the test set out in *R v Mohan*, [1994] 2 SCR 9.

[46] The Respondent thus submits that the proposed reply evidence as a whole is neither relevant nor necessary. It argues that admitting further evidence at this stage is inherently prejudicial to the Respondent, since it has already closed its defence. The Claimant's Application has already delayed the oral submissions hearing that was originally scheduled for November 27–28, 2025. That delay will undoubtedly increase if the Tribunal admits the additional evidence, making examinations and/or sur-reply evidence necessary as a matter of procedural fairness.

[47] The Respondent therefore requests that the Tribunal: dismiss the Claimant's Application to adduce further evidence; dismiss the Claimant's alternative request that judicial notice be taken of three alleged statistics; and order that the Parties bear their own costs. Alternatively, the Respondent asks the Tribunal to grant it leave to file sur-reply evidence and to cross-examine the authors of the admitted reply evidence, Elizabeth Carson and Dr. Martin-McGuire.

C. The Claimant's Reply Submissions

[48] The Claimant replies that the prohibition against case splitting has no application in the present circumstances, as the evidence was submitted in response to issues first raised in the Respondent's final written submissions, and not withheld to be adduced later on.

[49] The Claimant insists on the Tribunal's flexible, purposive and permissive approach to evidence and its broad discretion. It recalls that the *SCT Rules* do not impose a rigid "close of evidence," nor do they preclude the filing of evidence necessarily incidental to a claimant's reply. In fact, it points to paragraph 104(c) of the *SCT Rules* which explicitly anticipates that a claimant may enter evidence in reply after the Crown's evidence has been concluded, and that such evidence is procedurally proper, if it responds to issues raised by the Crown, which is exactly the case here. It argues that the *SCT Rules* are clear that evidence may be admitted up to and during the oral submissions hearing, which ensures that the Tribunal may consider a complete and accurate evidentiary record and safeguard its mandate.

[50] It submits that it is inappropriate to resort to criminal law jurisprudence on case splitting as the Respondent is doing, as it differs fundamentally in purpose, substance and in the application of the rules of evidence.

[51] On the contrary, it argues that the evidence incorporated into the Claimant's proposed reply evidence was in response to a novel legal position advanced by the Respondent. Preventing the Claimant from adequately replying to the Respondent's legal argument would be prejudicial to the Claimant. The Claimant's filing of new documents does not introduce a new claim or theory but instead clarifies the existing record in direct reply to the Respondent's novel theory of reserve creation, which first arose in the Respondent's final written submissions—which the Claimant argues was unforeseeable.

[52] The Claimant argues that its evidence is proper reply evidence as it critiques, rebuts, challenges and responds directly to matters raised by the Respondent’s submissions. This evidence neither repeats nor reinforces the Claimant’s initial position but instead addresses new and unanticipated issues that could not have been foreseen at the time the Claimant filed its primary evidence.

IV. ANALYSIS

A. The General Rule Against Case-Splitting

[53] As described above, the Claimant seeks to admit two affidavits of Elizabeth Carson which include four documents—all of which were, unequivocally, filed for the first time with the Tribunal after the final written submissions of the Respondent. At this stage, the evidentiary portion of the Claim was long over, and the Parties were set to make oral submissions.

[54] The *SCT Rules* do not explicitly provide for or proscribe the filing of evidence at such a late stage. They also do not explicitly clarify when a claimant’s reply evidence is “concluded”. The *SCT Rules* do, however, provide an order in which evidence should be presented, and then an order for arguments. Contrary to the argument of the Claimant, at no point do the *SCT Rules* discuss any evidence being filed alongside reply arguments:

Order of presentation

104 The order of presentation at the hearing is the following:

- (a) the claimant must make an opening address and then enter evidence;
- (b) after the claimant’s evidence is concluded, the Crown must make an opening address and then enter its evidence; and
- (c) after the Crown’s evidence is concluded, the claimant may enter evidence in reply.

Exhibits

105 All exhibits entered in evidence must be numbered and marked.

Order of argument

106 (1) After the parties have been given an opportunity to put in their respective cases, they must be heard in argument in the same order as that in which they entered evidence.

Reply

(2) A party may reply to the arguments of an adverse party and, if the reply raises a new point of law, the adverse party may answer on that point.

[55] The *Federal Courts Rules*, SOR/98-106, contain similar provisions at rules 274 and 278. In consistent caselaw, courts have clarified that, at a late stage of **reply evidence**, plaintiffs cannot split their case by bringing evidence that could have been reasonably anticipated to be presented in chief (*Amgen Canada Inc v Apotex Inc*, 2016 FCA 121 at para. 12; *Louis Dreyfus*). These cases do not consider filing reply evidence at the even later stage of **reply arguments**.

[56] In *Krause*, the Supreme Court of Canada was clear that this general rule against case-splitting applies both to civil and criminal trials, stating at page 473 that “[t]he general rule is that the Crown, or in civil matters the plaintiff, will not be allowed to split its case.”

[57] The rule essentially prohibits the party who called evidence first from filing further evidence to support its case after the responding party has finished calling its evidence. This rule exists as a matter of procedural fairness and efficiency, “by ensuring that the responding party knows the case it has to meet and avoids an endless alternation between the parties in adducing evidence” (*Merck Sharpe & Dohme Corp v Pharmascience Inc*, 2021 FC 1456 at para. 4; *Bauer Hockey Ltd v Sport Maska Inc*, 2020 FC 212 at para. 13).

[58] The only exception to the prohibition against case-splitting is proper reply evidence, that is, evidence that refutes the opposite party’s **unforeseeable evidence** (*Louis Dreyfus; Halford v Seed Hawk Inc*, 2003 FCT 141 at para. 15).

[59] The Claimant, whether intentionally or not, has engaged in claim-splitting. The Tribunal does not believe that the documents that the Claimant seeks to have admitted into evidence amount to proper reply evidence, as the necessity of this evidence did not arise as a result of unforeseeable evidence produced by the Respondent. Rather, they arose out of arguments, not evidence, that were to be expected following the Respondent’s historical expert report and testimony.

B. The Tribunal’s Broad Discretion to Admit Evidence

[60] The Tribunal is not bound by the strict rules of evidence that apply in traditional court settings and can choose to accept, when circumstances warrant it, evidence that would not be admissible in a court of law.

[61] Under paragraph 13(1)(b) of the *SCTA*, the Tribunal has a broad discretion to admit evidence:

13. (1) The Tribunal has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, **all the powers, rights and privileges that are vested in a superior court of record and may**

...

(b) receive and accept any evidence, including oral history, and other information, whether on oath or by affidavit or otherwise, that it sees fit, **whether or not that evidence or information is or would be admissible in a court of law**, unless it would be inadmissible in a court by reason of any privilege under the law of evidence;... [emphasis added]

[62] The adjudication of historical specific claims is often dependent on fragmented records, oral history, and contextual interpretation, and results from discovery and litigation that take place over very lengthy periods of time, and thus necessarily requires a functional and flexible approach to evidence.

[63] In exercising its discretion, the Tribunal must balance the importance of the rules of evidence—especially those that guarantee procedural fairness and substantive justice—with its mandate of resolving complex historical claims in a just, timely and cost-effective manner, while taking the cultural diversity and the distinctive character of specific claims into account and advancing the overarching goal of reconciliation.

C. The Documents in Question

[64] Claimants should be strongly discouraged from resorting to claim-splitting and should be forewarned that the Tribunal will not lightly admit evidence produced this far in the proceedings.

[65] However, in the current circumstances, refusing to admit publicly available documents or data that could assist the Tribunal in making its determination on the merits does not seem the approach most contributive to a just adjudication of the Claim. The material in question provides relevant factual information that requires no expert interpretation, offers context to the Claim and stems from an inherently trustworthy source—the Government of Canada websites. Moreover, no meaningful prejudice will befall the Respondent if this evidence is admitted with a reasonable opportunity for sur-reply and cross-examination.

[66] The Claimant seeks to admit essentially four documents to the record, to support the three alleged statistics.

[67] The first is the Natural Resources Canada survey plans search results, showing the number of reserves surveyed in Canada from 1879–1884 (the NRCAN Results), included in the first affidavit of Elizabeth Carson. The Claimant seeks to admit this document into evidence to establish that “Canada surveyed 517 reserves for First Nations between 1879-1884, including 63 reserves in what would eventually become known as the Province of Saskatchewan” (Claimant’s Application submissions at para. 8).

[68] The number of reserves surveyed in a specific province in Canada is a historical fact that is relevant and that could be useful to the Tribunal’s final determination.

[69] Given that the NRCAN Results document requires some explanation of the information entered into the search engine to obtain the results, and considering the Respondent’s claim that the description column of the Excel spreadsheets generated from the NRCAN website was removed from the NRCAN Results document, the Respondent shall be allowed to cross-examine the Claimant’s Research Director, Elizabeth Carson, by written interrogatory, specifically on the content of her first affidavit, her methodology to obtain the results, as well as on the tailoring of the information which she undertook. No re-examination by the Claimant will be allowed, unless leave to do so is sought, to avoid any additional delays. A timeline for the written interrogatory is set out in the Order at the end of this decision. The slow progress of this file is of great concern to the Tribunal, and therefore this measure is necessary to move things towards the oral submissions hearing on the merits of the Claim. Any arguments regarding the cross-examination or the NRCAN Results document and its relevance and reliability can be made at the oral submissions hearing, which will be held by videoconference on May 11–13, 2026, pursuant to the Tribunal’s Direction of February 11, 2026.

[70] The two following documents can be grouped and discussed together: the ICC Report authored by Dr. Martin-McGuire, titled “First Nation land surrenders on the Prairies, 1896–1911” and published by the ICC in 1998, as well as the excerpt from the executive summary of the ICC Report, which can be found on the Government of Canada Publications website.

[71] The Claimant, at the Application hearing, acknowledged that the ICC Report was not being filed as an expert opinion, but merely as the source of a statistic it is seeking to submit to the Tribunal—namely, that “21% of all reserve lands on the Prairies were ‘surrendered’ back to the Crown between 1897-1911.” This statistic and the quoted excerpt of the executive summary of the report can be found on the Government of Canada Publications website, without the need to access the report itself.

[72] As the Claimant did not commission the report or prepare its terms of reference, and the report was prepared over a decade ago for other purposes, the Tribunal does not see the relevance of admitting the complete ICC Report, nor holding a cross-examination of Dr. Martin-McGuire.

[73] The ICC Report is not being used to establish the author’s expert opinion but to establish underlying factual observation in the form of a statistic. In *R v Natsis*, 2018 ONCA 425, the Ontario Court of Appeal found that the underlying data collected by an expert in the preparation of his expert report can nonetheless be admitted “as factual observations whether or not his opinion evidence about the conclusions he drew from those observations was admitted” (at para. 20). In addition, the statistic can be found directly in the excerpt posted on the government website, making the report itself less necessary.

[74] The existence of a period of time where many reserve lands in the Prairies were surrendered back to the Crown is a historical fact that is relevant and may be useful for the Tribunal’s final determination of the matter.

[75] The Tribunal will therefore only allow the excerpt from the executive summary to be entered as evidence, but not the entire ICC Report, to avoid reference to any other portions of the report.

[76] Finally, the Claimant seeks to admit into evidence a status report retrieved from the Government of Canada Specific Claims Reporting Centre to demonstrate that “[a]s of November 7, 2025, the specific claims process has successfully resolved 67% of specific claims initiated by Saskatchewan First Nations arising from the alleged unlawful surrender of reserve lands.”

[77] The Tribunal will also allow the status report into evidence. This is a fact that provides context surrounding the present case and could assist the Tribunal in its final determination.

[78] The Tribunal finds the new documents, with the exception of the ICC Report, to be admissible under paragraph 13(1)(b) of the *SCTA*, as they are relevant, inherently trustworthy and useful to provide the Tribunal with important contextual information. The information contained in these documents falls within the scope of the pleadings and will assist in the determination of a central issue for the Tribunal, that is, the level of control that First Nations exercised on reserve surveying at that specific time.

[79] To ensure it is not prejudiced by the late disclosure of these documents and data, and in addition to its written cross-examination of the Claimant's Research Director, Elizabeth Carson, the Respondent will be able to make its argument on the relevance of these documents and statistics to the case at bar, or lack thereof, in its sur-reply and at the oral submissions hearing.

[80] The weight to be given to these documents and their ability to prove the points that the Claimant is trying to make will be determined by the Tribunal after the oral submissions hearing on the merits of this matter.

V. CONCLUSION

[81] The Tribunal has a broad discretion to receive and accept evidence, as established at paragraph 13(1)(b) of the *SCTA*, even when such evidence would not be admissible in a court of law.

[82] In exercising its discretion, the Tribunal must balance the importance of the rules of evidence, especially those that guarantee procedural fairness and substantive justice, with its mandate to resolve complex historical claims in a just, timely and cost-effective manner, and advance reconciliation.

[83] With the exception of the ICC Report, the new documents or data sought to be entered as evidence by the Claimant are factual, stem from publicly available and inherently reliable documents and websites, can assist the Tribunal in making its determination on the merits as they supply relevant contextual information and, most importantly, do not cause any prejudice to the Respondent so long as it is allowed an opportunity for sur-reply and cross-examination.

[84] The goal of reconciliation and rules of procedural fairness are best served by admitting

these documents—making use of the broad powers at paragraph 13(1)(b) of the *SCTA*—and allowing the Respondent a sur-reply and written cross-examination of the affiant within a strictly prescribed timeline with clear parameters.

VI. ORDER

[85] The Respondent is granted leave to file a written cross-examination of the affiant, Elizabeth Carson, on the content of her first affidavit, and a sur-reply.

[86] The written cross-examination will be strictly limited to the content of the affiant’s first affidavit, her methodology to obtain the NRCAN Results, as well as on the tailoring of the information which she undertook to produce the NRCAN Results document, and cannot introduce extraneous materials.

[87] The ICC Report will be stricken from the record. The Tribunal therefore directs the Registry to remove the second affidavit from the record. The Claimant shall re-file the second affidavit without the ICC Report as an exhibit and without any reference to it.

[88] The Respondent shall prepare its questions, submit them to the affiant and file them with the Tribunal on or before **March 18, 2026**. The affiant shall submit her answers to the Respondent and the Claimant shall file them with the Tribunal on or before **March 30, 2026**.

[89] The Respondent shall file with the Tribunal its sur-reply within 30 days of receipt of the written cross-examination answers, namely on or before **April 29, 2026**.

VICTORIA CHIAPPETTA

Honourable Justice Chiappetta, Chairperson

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

Date: 20260306

File No.: SCT-5003-19

OTTAWA, ONTARIO March 6, 2026

PRESENT: Honourable Victoria Chiappetta, Chairperson

BETWEEN:

LUCKY MAN CREE NATION

Claimant (Applicant)

and

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

Respondent (Respondent)

COUNSEL SHEET

TO: Counsel for the Claimant (Applicant) LUCKY MAN CREE NATION
As represented by Steven Carey, Aron Taylor and Paige Thomas
Maurice Law, Barristers & Solicitors

AND TO: Counsel for the Respondent (Respondent)
As represented by James Olchoway and Meghan Shewchuk
Department of Justice