

INFORMATION DOCUMENT

Proposed Comprehensive Specific Claims Settlement Agreement for all Kanaka Bar Specific Claims

An Information Meeting will be held via Zoom on December 16, 2020 at 5:00 p.m., via *Zoom Video and Telephone Conferencing* to review the proposed Comprehensive Specific Claims Settlement Agreement for all of the Band's Specific Claims arising from events between 1858 and the date the Settlement Agreement is signed (i.e. early 2021) regarding the administration of the reserves by the Government of Canada. These claims relate to the CPR, CNR, BC Hydro and highway right-of-ways through the reserves of the Band and the alienation of Lot 4.

Copies of the proposed Settlement Agreement will be available for Members to view at the Band Office.

1. OVERVIEW OF SPECIFIC CLAIMS

The term "Specific Claims" refers to claims made by a First Nation against the federal government that relate to the administration of reserve land and other First Nations assets and which includes alleged illegal dispositions or inadequate compensation related to reserve lands.

In 2008 Canada passed the *Specific Claims Tribunal Act*, with timelines for the assessment and negotiation of Specific Claims and created the Specific Claims Tribunal, an independent adjudicative body with authority to settle Specific Claims. The Band has pursued its four strongest Specific Claims through the Tribunal.

For the past several years, the Band has been pursuing a process to have Canada agree to a comprehensive settlement to resolve all of the Band's Specific Claims.

Known Specific Claims

The Band currently has four Specific Claims before the Specific Claims Tribunal which have all been validated by Consent Order:

- CPR Specific Claim through Whyeek IR 4;
- Illegal Preemption of T'aqt'agtn Specific Claim (the Lot 4 Claim);
- CNPR Right-of-Way Across Kanaka Bar IR 1A Specific Claim; and
- CNR Expropriation from IR 2 Specific Claim.

A Consent Order on validity is a formal Order of the Tribunal finding a Specific Claim valid after Canada has admitted the validity of the Claim.

Non-Tribunal Claims

As well as the four Specific Claims before the Tribunal, the Band has a BC Hydro Right-of-Way on IR 4 Specific Claim (the “BC Hydro RoW Specific Claim”) which is currently under assessment by Canada.

Possible Un-researched Claims

In addition to the “known” Specific Claims the Band has, there are possible unknown Specific Claims. The Settlement Agreement contemplates full and final resolution of all potential Specific Claims the Band may have.

Under the proposed Settlement Agreement, Canada will provide **\$7,716,307**, less loan funding, to the Band in compensation for a full release and indemnification by the Band of any Specific Claims based on events between 1858 and the date the Settlement Agreement is signed (2021)

2. HISTORY OF THE BAND’S SPECIFIC CLAIMS

1. CPR Claim

The CPR Claim concerns the taking of 111 acres of land from Whyeek IR 4 for a right-of-way for the Canadian Pacific Railway (“CPR”).

The CPR Claim was originally filed on behalf of the Kanaka Bar Indian Band in 1990 with additional material submitted to Canada in 1997 and the CPR Claim was ‘refreshed’ in 2009. The CPR Claim was partially accepted for negotiation in 2011, and a low settlement offer was issued. The Band requested a meeting with the Specific Claims Board in 2012 to discuss a counter offer, but its request was denied.

By letter, dated February 16, 2012, Canada advised Band that the status of the CPR Claim within the Specific Claims Database had been updated to “closed”. The CPR Claim was filed with the Tribunal on June 29, 2018.

Factual Basis

- Whyeek IR 4 was allotted by Indian Reserve Commissioner Sproat in June 1878.
- Whyeek IR 4 had been a principal residence of the Kanaka Bar people and included a historic burial site and an important fishing camp.
- Whyeek IR 4 was surveyed by Dominion Land Surveyor Jemmett in 1885 at 351 acres.

- The CPR was constructed through Whyeek IR 4 in the early 1880's. A survey plan showed the location of the CPR right-of-way as a 600-foot-wide right-of-way through the middle of Whyeek IR 4, comprising 110 acres, nearly one third of the reserve.
- The CPR right-of-way was re-surveyed (as constructed) in 1904. This plan showed the acreage of right-of-way through Whyeek IR 4 as 107 acres.
- An Order in Council dated 19 April 1912 authorized the conveyance of rights-of-way through Indian Reserves between Kanaka Bar and Lytton, and included a 107 acre right-of-way through Whyeek IR 4.
- Letters patent were issued in 1928, for 111 acres.
- The compensation indicated for Whyeek IR 4 in 1891, and eventually paid to the benefit of the Band was \$110.00 for 110 acres.

Legal Basis

The CPR Claim was supported by prior caselaw of the Tribunal and based primarily on legal arguments that Canada had a legal obligation to safeguard the Band's interest in its reserve lands and to deal with the lands in the best interests of the Members of the Band.

CPR Claim Validity Consent Order

The CPR Claim was ordered valid by Consent Order of the Tribunal on May 15, 2019 under paragraphs 14(1)(b), (c), and (d) of the *Specific Claims Tribunal Act* on the basis that:

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.

Following the Consent Order, Canada proposed to pursue a negotiated settlement of the CPR Claim in a letter dated September 18, 2018.

The Band accepted Canada's offer to negotiate the CPR Claim by BCR dated April 1, 2019.

2. Lot 4 Claim

The Lot 4 Claim relates to the illegal pre-emption in 1861 and alienation of a portion of the Band's settlement at T'aqt'agtn, now known as "Lot 4", consisting of 11 acres. The Lot 4 Claim was originally filed on behalf of the Kanaka Bar Indian Band in 1992. The Lot 4 Claim would be rejected by Canada in 1995, leading to a revised and updated Claim being submitted in 2011. In 2013, the Lot 4 Claim was once again rejected by Canada, and subsequently filed with the Tribunal on October 19, 2018.

Factual Basis

- In May 1861, on behalf of BC, Surveyor Turnbull travelled through the lower Fraser valley and up the Fraser Canyon to stake and mark all Indian villages, burial places, and reserves.
- Lot 4 was pre-empted in 1861 and its pre-emption was recorded on the same day that Turnbull laid out an adjoining small reserve for the Band.
- On May 28, 1861, the Colonial Magistrate recorded Pre-Emption No. 14 (later known as Lot 4) next to the reserve for two settlers.
- Early census records indicate that T'aqt'agtn was a large community of the Band when the land was pre-empted.
- At the time of the pre-emption, colonial legislation expressly exempted Indian settlements from the lands available for pre-emption and sale in the Colony.
- When Reserve Commissioner Sproat visited T'aqt'agtn in June 1878 for the purpose of confirming and setting aside reserve lands for the Band, he was made aware of the pre-emption and questioned the legality of it.
- Despite the many steps available to challenge the pre-emption and to protect and reserve the lands for the Band, neither Sproat nor his successor made any investigation of the unlawful pre-emption, or took any steps to challenge it or to protect or reserve the heart of the settlement.
- As a result of the inaction of federal officials, the illegal pre-emption deprived the Band of part of its village lands.

Legal Basis

The Lot 4 Claim was based primarily on the legal argument that Canada and the Colony of BC breached the Crown's fiduciary obligations to the Band in the Reserve creation process resulting in Lot 4 being lost.

Oral Evidence Hearing

From June 24-27, 2019, Kanaka Bar hosted the Tribunal, Department of Justice Lawyers, and representatives from the Specific Claims Branch of Crown-Indigenous Relations and Northern Affairs Canada in an Oral Evidence Hearing and Site Visit.

During the Oral Evidence Hearing the Tribunal heard extensive and compelling testimony from Kanaka Bar Elders and community members about how the Kanaka Bar community had historically used and occupied T'aqt'agtn including the lands at Lot 4, and provided testimony on the Band's traditional knowledge, practices and governance, including how the Band's Traditional Territory historically sustained the Kanaka Bar people.

Oral testimony provided by Band members was instrumental in having Canada admit the validity of the Lot 4 Claim.

Lot 4 Claim Validity Consent Order

The Lot 4 Claim was ordered valid by Consent Order of the Tribunal on July 31, 2020, under paragraphs 14(1)(b) and (c) of the *Specific Claims Tribunal Act*, on the basis that:

Canada breached a fiduciary obligation owed to the Claimant by failing to take measures to protect Lot 4 in 1861 from pre-emption and failing to challenge the pre-emption of Lot 4.

On July 7, 2020, Canada, wrote to the Band offering to seek a negotiated settlement of all of the Band's Specific Claims, including the Lot 4 Claim, with a release of all potential Specific Claims the Band may have.

The Band accepted Canada's offer to pursue a comprehensive negotiated settlement by BCR dated August 10, 2020.

3. CNR IR 1A Claim and CNR IR 2 Claim (the "CNR Claims")

The IR 2 Claim relates to the unlawful taking of rights-of-way through and damages to reserved lands on Kanaka Bar IR 2 by the Canadian Northern Pacific Railway ("CNR") consisting of 23.67 acres.

The IR 1A Claim related to the unlawful use of the current CNR Right-of-way within IR 1A consisting of 30.41 acres.

The CNR IR 2 Claim was filed with Canada on October 16 2008. The CNR IR 2 Claim was rejected for negotiation by Canada on May 19, 2011.

The CNR IR 1A Claim was originally filed with Canada in 1998 with additional legal arguments added to the original claim submission in 2009. The CNR IR 1A Claim was rejected for negotiation by Canada on July 25, 2011. The Tribunal.

The Band filed two Specific Claims with the Tribunal on July 15, 2019 for the CNR Claims.

Factual Basis

- IR 2 was surveyed on May 28, 1861 by Surveyor Turnbull.
- Commissioner Sproat visited Kanaka Bar on June 18, 1878 and confirmed the reserve set aside by Turnbull as IR 2 extending it to include a 10-acre woodlot and allotted lands which would later be confirmed as IR 1A.
- By the time the CNR Company was established, early surveys had alerted the Department of Indian Affairs (“DIA”) that constructing a railway would involve expropriation of more Indian reserve lands.
- On January 2, 1911, the Company sent DIA plans of a right-of-way required through Indian reserves between Boston Bar and Lytton, including IR 2 and the land allotted as IR 1A.
- The compensation paid by the Company for IR 2 circa 1911 was \$910.00.
- At the time, IR 1A had not been confirmed as a reserve and no compensation was ever paid for IR 1A.
- In 1909 Reverend John McDougall was commissioned by DIA to report on reserves within and to the south of the Railway Belt.
- Pursuant to McDougall’s report, in July 1911, IR 1A was surveyed by Surveyor Johnson at 170.93 acres.
- On March 15, 1915, the Royal Commission on Indian Affairs in BC passed resolutions which officially confirmed IR 2 at acreage that excluded the CNPR RoW.

- The Minutes of Decision of the Royal Commission confirming Kanaka Bar IR 1A at 170.93 acres, were approved by BC on July 26, 1923 and by the Federal Government on 19th July, 1924.
- On March 5, 1930 Letters Patent were issued to the CNR for possession of lands comprising the CNR Right-of-way for lands described through IR 1A for 30.41 acres.
- Letters Patent were issued on 27th February 1933, conveying 23.19 acres right-of-way through IR 2 to the CNR.

Legal Basis

The legal basis for the CNR Claims was that Canada had unlawfully disposed of the Band's reserve lands within the CNR Right-of-Way through IR 2 and IR 1A in breach of its legal obligations and fiduciary duties.

The Crown unlawfully disposed of the Band's IR 2 and IR 1A reserve lands to the CNR providing inadequate compensation for IR 2 and provided no compensation for IR 1A.

Oral Evidence Hearing

From February 17-19, 2020, Kanaka Bar hosted the Tribunal and Department of Justice Lawyers, in an Oral Evidence Hearing and Site Visit for the CNR Claims.

During the Oral Evidence Hearing, the Tribunal heard extensive and compelling testimony from various Kanaka Bar elders and community members about how the Kanaka Bar community had historically used and occupied T'aqt'agtn including the lands which are now part of the CNR right-of-way, and provided testimony on the Band's traditional knowledge, practices and governance, including how the Band's Traditional Territory historically sustained the Kanaka Bar people and the importance of fish to the Kanaka Bar people.

The Tribunal further heard about the significant effects that the CNR line through IR 2 and IR 1A has had on the Kanaka Bar people and their lands, and the interference the CNR has had on the Band's fisheries and fishing spots.

CNR Claims Validity Consent Order

The CNR Claims were ordered valid by Consent Orders of the Tribunal on August 12, 2020, under paragraphs 14(1)(b), (c) and (d) of the *Specific Claims Tribunal Act* on the basis that:

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

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

On July 7, 2020, Canada, wrote to the Band offering to seek a negotiated settlement of all of the Band's Specific Claims, including the CNR Claims, with a release of all potential Specific Claims the Band may have.

The Band accepted Canada's offer to pursue a comprehensive negotiated settlement by BCR dated August 10, 2020.

4. BC Hydro Right-of-Way on IR 4 Specific Claim (the "BC Hydro RoW Claim")

The BC Hydro RoW Specific Claim relates to British Columbia Hydro ("BC Hydro") obtaining a right-of-way for the transmission line in 1969 from the Minister of Indian Affairs Canada consisting of 36.94 acres of land from Whyeek IR No.4. The BC Hydro RoW Claim alleges compensation received by the Band was inadequate, and the procedure by which it was taken, was improper. The BC Hydro RoW Claim was sent to the Specific Claims Branch on April 16, 2020 for assessment. While Canada has not accepted this Claim yet, the Claim is part of this comprehensive settlement and values for this claim were included.

3. VALUATION

As a result of the Specific Claims Tribunal's decision in *Siska Indian Band v. Her Majesty the Queen in Right of Canada*, 2018 SCTC 2, in which the Tribunal validated the Siska Indian Band's CPR claim, Canada offered to agree to the validity of the Kanaka Bar CPR Claim and proposed pursuing a negotiated settlement of the CPR Claim in a letter dated September 18, 2018.

The Band accepted Canada's offer to negotiate the CPR Claim by BCR dated April 1, 2019.

Representatives of the Band and Canada met in person on July 4, 2019 to commence the negotiation process. Since July 4, 2019, the Parties have held a number of negotiations sessions to negotiate financial compensation to the Band for the CPR Claim. The federal negotiation team also had a site visit.

While negotiating, the CPR Claim, the Band was also actively advancing the Lot 4 and CNR Claims through the Tribunal.

Comprehensive Settlement

In June 2020, the Band tabled with Canada a formal offer to settle all of the Band's Specific Claims in the amount of **\$7,300,000 plus costs**.

The Band's proposal for **\$7,300,000 plus costs** was considered to be a reasonable amount based on an internal assessment of land values utilizing favourable data, bring forward methodology, appraisal data, and comparables for each of the Band's four ongoing Specific Claims currently before the Tribunal as well as the Band's BC Hydro Right-of-Way Claim.

On July 7, 2020, Canada, wrote to the Band in response to the ongoing comprehensive settlement discussions offering to seek a negotiated settlement of all of the Band's Specific Claims currently before the Specific Claims Tribunal with a release of all potential Specific Claims the Band may have.

The Band accepted Canada's offer to pursue a comprehensive negotiated settlement by BCR dated August 10, 2020.

Internal Financial Assessments

The Band's proposal for a comprehensive offer in the amount of **\$7,300,000 plus costs** considered compensation categories for land values based on:

1. Current Improved Market Value (the value of the land today);
2. Loss of Use (annual rental compensation for past use); and
3. Injurious Affection (damage to the remainder of any adjacent lands).

Loss of Use and Injurious Affection values were then brought forward to present day value by applying annual compound interest rates based on the Band Trust Fund ("BTF") Rate (e.g. BTF was 5% annually up to 1969 and thereafter has been comparable to adjustments of the Bank of Canada interest rate). Band Trust Fund rates are interest rates which the Federal Government pays on all "Indian Moneys" it holds in trust for an Indian Band.

Adequacy of Canada's Comprehensive Specific Claim Settlement Offer

When the total amount of compensation being offered by Canada \$7,716,307 is broken down, it is considered to make the Band whole from the Band's losses arising from the Canada's breach of duties to the Band giving rise to actionable Specific Claims.

\$7,300,000 represents the Band's own internal valuation of land values for the Tribunal Claims and BC-Hydro RoW Claim, including loss of use, current unimproved market value, and injurious affection.

The additional \$416,307 represents costs incurred by the Band to resolve its Specific Claims. Costs included legal costs, administrative costs, costs of Band consultants, negotiations costs, and ratification costs

Although the Band could seek a higher amount of compensation through the Tribunal process, there are a number of factors that support Canada's offer of compensation in the amount of \$7,716,307 to be a reasonable offer and provides a fair valuation.

Uncertainty of the Tribunal Process

The Tribunal process is an uncertain process where the Band cannot be sure of the outcome including validity and compensation determinations, witness testimony, and results of expert reports. For the Band's four Specific Claim which have already been validated by the Tribunal through Consent Order, the amount of compensation which the Band is entitled is still uncertain and the Tribunal could award compensation in an amount which is less than the Band would expect.

During compensation proceedings before the Tribunal, Canada could push for the lowest possible compensation amount. The result could be lower or equal to the negotiated dollar amount. Although it could be higher, such an outcome is considered unlikely. A negotiated settlement provides both Parties with certainty.

Length of Proceedings

Through the Tribunal process Canada could take hard positions, which could lead to protracted compensation proceedings lasting up to three or four years. Additionally, either Canada or the Band could always seek to appeal a decision of the Tribunal in Court which could add years to the process.

4. COMPENSATION (ARTICLE 2)

Canada agrees to pay to the Band \$7,716,307 in compensation in full and final settlement of the Claims less loan funding amounts already advanced to the Band which Canada is first authorized to deduct.

The total amount of Negotiation Loan Funding is +/- \$118,000. This means that Canada will deduct +/- \$118,000 from the total amount of compensation, leaving the Band with approximately \$7,598,000.

The compensation balance will be deposited by Canada into a bank account of the Band within 45 days of the Settlement Agreement being signed by the Band and Canada.

The compensation will not be considered "Indian Moneys" under the *Indian Act*. This means that the *Indian Act* will not govern the expenditure or management of the settlement funds.

Account Managed by the Band with a Financial Institution

Under the Settlement Agreement, Compensation will be deposited into an account with a Financial Institution (e.g. a bank) rather than an account managed by Canada under the *Indian Act*.

By depositing compensation in an account with a Financial Institution, the Band will have interest rates that are determined more generally by market conditions. Although it is not risk free, generally, Financial Institutions have more favorable interest rates than Band Trust Fund rates, providing for a greater return on the Band's investment.

Pursuant to the *Indian Act*, Canada administers capital and revenue moneys accounts for Indian Bands across Canada, including Kanaka Bar. The compensation will not be deposited into capital and revenue moneys accounts of Canada. The rate of interest on such accounts is commonly referred to as the Band Trust Fund ("BTF") rate. The BTF rate is the rate at moneys held in trust by the Crown accrue interest. Historically, this rate was set by Order in Council, and was updated at various intervals. Since 1981, the rate has been set every quarter, and is linked to the yields on 10-year long-term Government of Canada bonds. The advantage of depositing compensation in an account managed by Canada is that it is risk free as the interest rate is set by Canada. However, the trade-off is that the interest rate is relatively low.

5. THE BAND'S ABILITY TO APPLY FOR NEW RESERVE

Under the Settlement Agreement, the Band will have an opportunity to apply to Canada to have land purchased by the Band to be set aside as a reserve for the use and benefit of the Band or use land already purchased (e.g. Lot 4). The purchased land must be within the traditional territory of the Band if the Band proposes to add the land to reserve.

With respect to adding to reserve lands, some of the advantages are that the Band would be eligible to apply to Indigenous Services Canada ("ISC") for funding for capital infrastructure, housing, and other services. Any proposed development would not be restricted by Regional District zoning restrictions. Band members working on reserve lands would also have income tax exemptions under section 87 of the *Indian Act*.

The disadvantages of adding reserve land are that reserve lands are harder to develop through a leasing process, which requires the consent of ISC. With respect to maintaining the lands as private (fee simple land), one advantage is that they are faster to develop as there are no *Indian Act* restrictions. The disadvantages include that the Band would be required to comply with applicable zoning bylaws and Band members would not be able to claim income tax exemptions.

If the Band applies to have lands added to the reserve, the Minister has discretion to recommend to the Governor in Council to set aside those lands as a reserve, provided

that all laws, policies and procedures regarding Reserve creation are followed, including meeting the requirements of Canada's *Additions to Reserve Policy* ("ATR Policy") to Canada's satisfaction.

The Band will be responsible to pay all costs related to having the lands set aside as reserve lands, including:

- costs associated with the acquisition of the lands;
- costs to comply with Canada's *ATR Policy*; and
- costs for using and occupying the proposed reserve, including:
 - all surveys, conveyances, removal of encroachments or encumbrances, searches, land title registration, legal fees, commissions, applicable taxes, feasibility studies, appraisals, environmental review, environmental remediation;
 - any payments for municipal services; and
 - capital infrastructure costs including the construction, repair, maintenance, operation and other associated costs of telephone, cable and hydro-electric service facilities, sewers and other water systems, roads, fencing, housing, recreation facilities and other community buildings and facilities.

If the Band applies to have the land added to their reserve lands as set out above, and all the other conditions are met, land could be added to the Band's reserve land. The reserve land would then be administered under the *Indian Act*, like the Band's other reserves.

6. WHAT THE BAND MUST AGREE TO:

A. Release to Canada and Discontinuing Proceedings (Articles 3 & 5)

In exchange for the compensation of \$7,716,307 that would be paid to the Band, all of the Band's current Specific Claims, along with any other Specific Claims the Band may have regarding the administration of reserve lands, but may not be aware of, would be forever released and the Crown will no longer have any further legal liability.

The Band would also agree that they will never make a claim or start an action or lawsuit against Canada with respect to:

- Any aspects of the Claims;
- Negotiation costs and funding;
- Negotiation, ratification, and other procedures;

- Adequacy of compensation; and
- Deposit of compensation (management, investment, disbursement).

This means the Band will not be able to make any legal claims against Canada regarding the Band's Specific Claims and the related processes and procedures related to the execution of the Settlement Agreement as outlined above.

However, the Settlement Agreement does not release Canada from any alleged future breach of Canada's obligations to the Band based on events that occur **after the effective date of the Settlement Agreement** (2021) arising from Canada's administration of the Band's reserves.

B. Indemnification of Canada (Article 4)

In exchange for compensation of \$7,716,307 the Band must further agree to cover Canada against any lawsuit commenced by a third party (e.g. another person) if a claim is based on the same subject matter of any of the Specific Claims is made against Canada. Broadly, if any type of proceeding is brought against Canada in the future related to the released Claims under the Settlement Agreement, the Band has promised to cover any of Canada's losses. The Band is not aware of any potential claims of other persons that may have a claim against Canada for the same subject matters as the Specific Claims.

C. Agreement not to Challenge Third Party Title

Under the Settlement Agreement, the Band must agree that it will not legally challenge the use or ownership or interfere with the use and enjoyment of lands which are held by a third-party (e.g. CNR, CPR, BC-Hydro, highway) which would be claimed as illegally disposed of by Canada through an illegal taking based Specific Claim; however, the Band still has the right to address ongoing operational and tenure issues with CPR, CNR, the Ministry of Transportation and Infrastructure and BC Hydro.

D. Representations and Warranties (Article 10)

Under Article 10 of the Settlement Agreement, the Band will guarantee and promise the following:

- the Band will use the compensation paid to the Band under the Settlement Agreement for the benefit of the Band;
- the Band has held an information meeting with Members of the Band to explain the terms and conditions of the Settlement Agreement;
- the Band has retained a lawyer to advise on the legal nature and effect of the Settlement Agreement;

- the Band's lawyer has fully explained to the Band Council and Band Members who attended the Information Meeting what the Settlement Agreement says, what it means legally, what the effect of the Settlement Agreement is for the Band, and what is required to implement the Settlement Agreement;
- the Band has retained and relied upon an independent financial advisor to provide financial advice to the Band on the Settlement Agreement;
- its financial advisor has provided to the Council and to the Members who participated in the Information Meeting independent financial advice on the management and administration of the Compensation Balance, and the deposit of the Compensation Balance into an account managed by the Band with a Financial Institution.
- Canada has not advised the Band on the placement or management of the compensation;
- the Band has obtained the advice of its lawyer on all other matters related to the settlement of the claim; and
- If the Band determines it necessary to have an interpreter fluent in Nlaka'pamuxcin, then an interpreter was present and available.

7. RATIFICATION (ARTICLE 6)

In order for the Settlement Agreement to be agreed to and authorized by the Band, it must be ratified by Band Members at a Ratification Vote.

The Settlement Agreement will require two conditions to be met in for the Settlement Agreement to be ratified:

1. At least 25% plus one of the Voters of the Band vote in favour of the Settlement Agreement at the Ratification Vote; and
2. There must be more Voters at the Ratification Vote who vote in favour of the Settlement Agreement than Voters at the Ratification Vote who against the Settlement Agreement.

This means that, for example if there were 100 Band Voters, 51 would need to vote. In order for Ratification, a majority of those voting – i.e., 26 electors – must vote to approve the Settlement Agreement.

Information Meeting

There will be an information meeting held on **December 16, 2020 at 5:00 p.m. (PST)**, via *Zoom Video Conferencing* in advance of the Ratification Vote where Band Members have an opportunity to ask questions of Band Council, the Band's lawyers and financial advisor as they pertain to the Settlement Agreement.

The Band will provide information to those Members that cannot attend, e.g. by newsletter, website, e-mail.

Ratification Vote

Following the Information Meeting, voting on the proposed Settlement Agreement will be available through:

1. mail-in ballot;
2. drop off in-person;
3. electronically via email; or
4. by toll-free telephone.

If voting by email, voters can email the Ratification Officer in advance to confirm personal voter registration details and receive further instructions on casting their electronic ballot.

If you are a Kanaka Bar Member who has any doubt as to whether your name is on the Voters List, please contact Ratification Officer Kathryn Brooks to confirm your voting eligibility and apply to have your name added to the Voters List if necessary.

Voters who live off-Reserve are entitled to and encouraged to vote. Information packages are sent to each eligible off-Reserve voter for whom an address is known. These packages contain information about the Ratification and a mail-in ballot. On reserve voters may also request a mail-in ballot package if they are unable to vote in person.

Council has appointed Kathryn Brooks as its Ratification Officer who can be contacted regarding voting questions or to request a mail-in package:

PHONE: 250-455-2200 EMAIL: ceo-ED@kanakabarband.ca

The ratification vote will be open from **December 17, 2020 until January 4, 2021 at 9:00 am.**

8. STEPS BEFORE SETTLEMENT AGREEMENT IS SIGNED (ARTICLE 8)

If the Settlement Agreement is successfully ratified by Membership at the Ratification Vote, then the Band has agreed to all the terms and conditions of the Settlement Agreement and Council is authorized to sign the Settlement Agreement.

Authorization and Appropriation of Funds by Canada

After the Settlement Agreement is signed by Council the Settlement Agreement will be sent to the Minister of Crown-Indigenous Relations for her signature. After the Minister signs the agreement, Canada will have 45 days to transfer the compensation amount to the Band.

9. THE BINDING EFFECT OF THE AGREEMENT (ARTICLE 14)

The Settlement Agreement is binding on both parties. This means that once the Settlement Agreement is signed by the Band and Canada, both Parties are bound by the terms in it and cannot withdraw from the Settlement Agreement.

10. NEXT STEPS

Chief and Council sign Settlement Agreement

- Once Ratification Vote confirms Membership support of entering the Settlement Agreement, Chief and Council can sign the Settlement Agreement.

Canada signs Settlement Agreement

- Once the Council has signed the Settlement Agreement, the Minister of Crown-Indigenous Relations and Northern Affairs Canada will sign the Settlement Agreement.

Payment of Funds within 45 Days

- Within 45 days after the Settlement Agreement is executed, the financial compensation will be deposited to the bank account designated by the Band.

Additions to Reserve Lands

- The Band may afterwards seek to apply to have lands added to reserve as an option.

QUESTIONS?

If you have any questions, please contact:

Kathryn Brooks, Ratification Officer, who can be contacted regarding voting questions by telephone at 250-455-2200 or by email at ceo-ED@kanakabarband.ca

Darwin Hanna, Legal Counsel for the Band, by telephone at 604-222-2374 or by email at darwin@chlaw.ca

Zain Nayani, Kanaka Bar Financial Advisor, by telephone at 604-354-5660 or by email at zain@zn-advisory.com