

FILE NO.: SCT-5002-16
DATE: 20170213

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
KAHKEWISTAHAW FIRST NATION)	
)	Stephen M. Phillipow, for the Claimant
)	
Claimant)	
)	
– and –)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	Lauri M. Miller, for the Respondent
Affairs and Northern Development)	
)	
)	
Respondent)	
)	
)	
)	HEARD: January 24, 2017

ENDORSEMENT AND ORDER

Honourable Barry MacDougall

A Case Management Conference (CMC) was held by teleconference on January 24, 2017, at 11:00 A.M., Eastern Time (Ottawa).

[1] The Respondent shall provide the Claimant with a draft Oral History Protocol on or before **February 17, 2017**.

[2] The Claimant shall submit a Will-Say Statement of the Elder who will be testifying at an oral history evidence hearing on or before **February 17, 2017**.

[3] The Claimant shall on or before **February 17, 2017**, report back to the Tribunal on whether or not it intends to retain a second expert, and if so, to report on the status of the retainer, and the time required by the expert to produce the expert's report.

[4] The Respondent indicated a concern with the Tribunal's ability to test the reliability of the affidavits of deceased persons, including one unsworn affidavit, which the Claimant intends to introduce as evidence. On or before **February 17, 2017**, the Parties shall discuss the issue of the admissibility of this evidence and attempt to seek a resolution. If necessary, the Parties may seek direction from the Tribunal on whose onus it is to bring an Application on this issue at the next CMC.

[5] The Parties shall report to each other on progress made and file a Status Report, either jointly or separately, with the Tribunal on or before **February 17, 2017**.

[6] The status of a Common Book of Documents, an Agreed Statement of Facts, an Agreed Statement of Issues and a Procedural Timeline will be dealt with at the next CMC.

[7] The next CMC will be held by teleconference on **April 11, 2017**, at 11:00 A.M., Eastern Time (Ottawa).

[8] Pursuant to Rule 10 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, and upon the request of the Parties, **THE TRIBUNAL ORDERS that:**

a. The hearing of this Claim shall proceed in two separate stages, in order to deal with issues of validity and compensation, respectively;

b. The Tribunal will first hold a hearing and render its decision on the validity of the Claim (Validity Stage).

c. The second stage of this Claim pertaining to compensation, including the principles of compensation and any applicable compensation criteria (Compensation Stage), will only proceed if the Claim is found to be valid. The Compensation Stage will

not begin until the Validity Stage has been completed, the issue(s) of validity decided, and the Parties have exhausted any rights they may have for judicial review to the Federal Court of Appeal or appeal to the Supreme Court of Canada;

d. If the Claim is ultimately determined to be valid, the Parties will have a reasonable amount of time to gather evidence relating to compensation, including expert evidence, before the Compensation Stage begins;

e. The Parties may delay taking steps to prepare their cases on compensation until a determination is made on validity; and,

f. In relation to this Order of Bifurcation, there shall be no costs awarded to either party.

BARRY MACDOUGALL

Honourable Barry MacDougall