



[1] The Respondent acknowledged that the Claimant is a First Nation within the meaning of Section 2(a) of the *Specific Claims Tribunal Act*, that the Claim is properly before the Tribunal, and that the Tribunal has jurisdiction to deal with it.

[2] The Parties acknowledged that any settlement proposals made by either of them during this proceeding should not be made known to the Tribunal. The Parties were encouraged to make such proposals and to otherwise explore settlement, including through mediation.

[3] The Respondent did not request that a Notice pursuant to Section 22 of the *Specific Claims Tribunal Act* be delivered to the Province of Alberta but it raised concern that Alberta might have an interest that could be significantly affected by a Tribunal decision in this Claim. The Respondent did not agree. After discussion about the Claimant's concerns, the Tribunal declined to deliver a Notice pursuant to Section 22 to the Province of Alberta at this time. Neither Party had made any allegation of legal responsibility or liability against the Province and any claim against the Province could only be made by a request for land by the Respondent, which had not been done. The Tribunal can only make awards for pecuniary loss and cannot order the transfer or provision of land.

[4] The Claimant indicated that it intended to call oral history evidence, although it had not yet identified potential witnesses. Nor had the Parties agreed on a protocol for the reception of oral history evidence. The Parties are encouraged to negotiate a mutually acceptable protocol on or before the next CMC, and the Claimant is encouraged to identify and prepare Will-Say Statements of proposed oral history witnesses' testimony on or before the next CMC. The question will be canvassed again at the next CMC.

[5] The Respondent expressed concern about a potential conflict of interest by the Claimant's counsel. It was not necessary to review the details of those concerns at the CMC. The Parties were encouraged to work cooperatively on their own to resolve the question. The issue will be canvassed again at the next CMC and the Respondent may indicate its desire at that time for resolution by an application if necessary.

[6] The Respondent reported that it had produced all documents within its present knowledge and control, subject to further research being required by virtue of expert reports or other matters that may arise. The Claimant indicated that it is in the process of listing its documents to be produced. The Claimant is encouraged to complete its document production on or before the next CMC. The question will be reconsidered at the next CMC.

[7] The Claimant reported that it intended to engage an expert. At this point it had not done so, but it had identified possible candidates. The Respondent indicated that it did not intend to engage an expert witness on the issue of validity of the Claim, but that it would probably do so for purposes of a response to the Claimant's expert when that expert's report has been produced. Progress on this question will be reviewed at the next CMC, including how and when expert reports will be produced if the Parties cannot agree.

[8] The Parties should work cooperatively in the preparation of a Common Book of Documents once the Claimant's document production is complete. This issue will be canvassed again at the next CMC.

[9] The preparation of Agreed Statements of Issues and Facts will not likely be possible until document production is complete, expert reports are in hand and oral history evidence has been disclosed. However, the Parties are encouraged to work cooperatively in respect of the preparation of an Agreed Statement of Facts by attempting to agree on facts which are not in dispute, more particularly the identity of the members of the First Nation who were included in the calculation of reserve land actually set aside under the terms of Treaty No. 6. The question will be reconsidered at the next CMC.

[10] The Claimant raised the possibility that privilege issues may arise although no specific privilege question was presently known.

[11] The Claimant presented and filed with the Tribunal on February 5, 2015, a Proposed Plan of Proceeding, which will be held for future consideration when the time is appropriate. The Tribunal was unwilling to set time guidelines more detailed than indicated above.

[12] The next CMC will be held by teleconference on **April 24, 2015**, at 2:00 P.M., Eastern Time (Ottawa).

[13] Upon consent of the Parties and pursuant to Rule 10 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, **THE TRIBUNAL ORDERS THAT:**

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

b. The Tribunal will first determine the issue of validity (“Validity Stage”); this stage will determine whether the proper amount of reserve land had been set aside for the Claimant based on the terms of Treaty No. 6. The question of historical value of such land will be determined in the compensation phase, if necessary, and in a manner to be determined at the appropriate time. The bringing forward of historical value would also be determined in the compensation phase.

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 to be found valid. The Compensation Stage will not begin until the Validity Stage has been completed, the issue(s) of validity and liability, if any, 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.

W.L. WHALEN

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Honourable W.L. Whalen