

FILE NO.: SCT-3001-16

DATE: 20170505

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
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BIG GRASSY)	
(MISHKOSIIMIINIIZIIBING) FIRST)	
NATION (INDIAN BAND) AND)	Donald R. Colborne, for the Claimants
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NATION (INDIAN BAND))	
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Claimants)	
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- and -)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	Lisa Cholosky, for the Respondent
As represented by the Minister of Indian)	
Affairs and Northern Development)	
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)	
Respondent)	
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)	
)	HEARD: April 5, 2017

ENDORSEMENT

Honourable Paul Mayer

A Case Management Conference (CMC) was held by teleconference on April 5, 2017, at 2:30 P.M., Eastern Time (Ottawa).

Respondent's Position on Validity of the Claim

[1] On or before **May 18, 2017**, the Respondent shall report to the Claimant and Tribunal on whether its denial of the validity of the entirety of the Claim has changed as a result of the Respondent's ongoing review of recent case law.

Potential Tribunal Assisted Mediation

[2] Within the next few weeks, the Claimant undertook to provide to the Respondent an outline from other files/matters of the Claimant which may serve to inform compensation owed for this Claim for the purposes of facilitating mediation. On or before **May 18, 2017**, the Claimant shall forward a without prejudice Claim valuation settlement amount to the Respondent.

[3] At the next CMC (set for May 25, 2017), the Respondent shall indicate to the Tribunal and Claimant whether it is prepared to mediate a settlement for this Claim. If so, the Respondent shall also make best efforts to identify the needed timeline to obtain a sufficient mandate to allow for Tribunal assisted mediation for this Claim to be productive.

[4] Should the Parties engage the mediation services of the Tribunal, the Tribunal advises the Parties that they:

- a. enter mediation with all necessary authorities in place to come to the table with the goal and belief that a final settlement of the Claim may be achieved through Tribunal assisted mediation;
- b. need not admit liability before or during a mediated settlement in order to settle a claim; and,
- c. consider the necessity of expert reports or full-fledged expert reports prior to mediation, which tend to be costly and take significant time to produce, contrary to a key benefit of mediation (cost-savings).

Discussion

[5] The Respondent reported that it requires more time to seek instructions from its client on the necessary authority/mandate and way forward for Tribunal assisted mediation, including whether a full financial settlement mandate will be necessary, and if so, how it might be obtained for the purposes of Tribunal assisted mediation and how long it might take. The Respondent also advised that a full financial settlement mandate, if required, would require some basis or information to justify a compensation offer amount from the Respondent. The Parties had discussed the possibility of the Respondent obtaining a full financial settlement mandate after the mediation takes place.

[6] The Claimant indicated that for its purposes of securing a mandate to mediate a settlement in good faith, it would not require an Amended Response from the Respondent admitting liability for certain aspects of the Claim prior to mediation; nor would it require that a full financial mandate be in place prior to mediation, provided the Respondent was prepared to enter mediation with a goal to settle the Claim in good faith and in due course.

[7] The Claimant expressed a willingness to send information it has to the Respondent on the former's theory of compensation and any examples it has from other files/matters which might assist with the mandating question of the Respondent regarding Claim value. The Claimant was prepared to do so in a matter of weeks. The Claimant is also prepared to forward to the Respondent a without prejudice Claim valuation amount to facilitate mediation.

[8] The Respondent noted that given this is one of the first claims to seriously entertain the possibility of Tribunal assisted mediation along with a few others ongoing at this time, figuring out the mandating process for mediation in practice might take some added time. However, once the process becomes more streamlined, other claims before the Tribunal including the Claimant's other claim (SCT-3002-16) should benefit.

Other Issues

[9] The issue of the Claimant's oral history evidence hearing date and Will-Say Statements, expert evidence, hearing bifurcation, and a section 22 Notice to the Province of Ontario will be

revisited, if necessary, pending the Respondent's stated position on mediation. The Parties are to address these issues, if necessary, in their next CMC brief.

[10] The next CMC will be held together with claim SCT-3002-16 by teleconference on **May 25, 2017**, at 4:30 P.M., Eastern Time (Ottawa).

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Honourable Paul Mayer