

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDICTIONS PARTICULIÈRES
March 9, 2015	
Guillaume Phaneuf	
Ottawa, ON	28

SPECIFIC CLAIMS TRIBUNAL

SCT File No. 4001-13

BETWEEN:

GAMBLERS FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF
CANADA

As represented by the Minister of Indian
Affairs and Northern Development

Respondent

SCT File No. 4001-12

BETWEEN:

WAYWAYSEECAPPO FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF
CANADA

As represented by the Minister of Indian
Affairs and Northern Development Canada

Respondent

**RESPONSE OF GAMBLERS FIRST NATION
ON THE ISSUE OF THE ADMISSIBILITY OF EXPERT EVIDENCE OF
TARA J. SMOCK**

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
Deputy Attorney General of Canada
Per: Jeff Echols
Suite 301, 310 Broadway
Winnipeg, MB R3C 0S6

TO: WAYWAYSEECAPPO FIRST NATION
As represented by J.R. Norman Boudreau and Earl C. Stevenson
Boudreau Law
Barristers & Solicitors
3 St. Anne's Road
Winnipeg, MB R2M 2X9

RESPONSE OF GAMBLERS FIRST NATION


1. Gamblers First Nation opposes the Respondent's Application for an Order that the analysis and testimony of Tara J. Smock of Joan Holmes & Associates and the "*Report on the 1892 and 1898 Surrenders of Land in Gambler Indian Reserve No. 63*" (the "Joan Holmes Report") prepared by Joan Holmes & Associates is not admissible as evidence in this matter.
2. In Waywayseecappo First Nation's Declaration of Claim, Waywayseecappo First Nation claimed that Indian Reserve No. 63 was surveyed and created for the Gambler and his followers in 1883, who had all remained as members of the Waywayseecappo Band. Waywayseecappo First Nation further claimed that Indian Reserves No. 62 and No. 63 should be regarded as two reserves established for the use and benefit of the Waywayseecappo First Nation.
3. Gamblers First Nation has disputed the claims of Waywayseecappo First Nation. In its Declaration of Claim, Gamblers First Nation has alleged that Indian Reserve No. 63 was surveyed and set aside for Gamblers First Nation, not Waywayseecappo First Nation.
4. The issue of whether or not Indian Reserve No. 63 was surveyed and set apart for Gamblers First Nation or Waywayseecappo First Nation was specifically identified as Issue #4 in the Agreed Statement of Issues – Validity Phase, which provided as follows:

Whether or not the 1881 Surrender was illegal, as between the Waywayseecappo First Nation, and the Gamblers First Nation, for which was the Silver Creek I.R. 63 surveyed and set apart?
5. The Joan Holmes Report analyzes the 1881 surrender of part of the Waywayseecappo Reserve in exchange for a separate reserve, the selection and survey of Indian Reserve No. 63, the early use of the reserve and Gamblers First Nation's unsuccessful attempts to obtain an exchange of lands for wood and hay purposes, the surrender of half of Indian Reserve No. 63 in 1892, and the subsequent surrender of most of the remaining reserve in 1898.

6. Gamblers First Nation submits that the Report is logically relevant to the issues raised in the Declaration of Claim and the Agreed Statement of Issues, and is necessary in assisting the trier of fact.
7. Gamblers First Nation further submits that Tara J. Smock is a properly qualified expert that has acquired special or peculiar knowledge through study and experience in respect of the matters contained in the Report. Gamblers First Nation proposes to qualify Ms. Smock as follows:

A research consultant and analyst with expertise in the field of aboriginal reserve establishment and surrenders as revealed through archival documentation, including federal policies, legislation, documentation on administrative practices regarding Indian affairs generally, maps, plans, published accounts of government officials, and secondary sources.
8. Lastly, Gamblers First Nation submits that no exclusionary rule applies.
9. In light of the foregoing, Gamblers First Nation submits that it has satisfied the criteria that must be met in order for the Report to be admitted as evidence in this matter. Gamblers First Nation further submits that the probative value of the Report exceeds the prejudicial effect of the Report, if any.
10. Gamblers First Nation therefore requests that the application of the Respondent be dismissed.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 6th day of March, 2015.



STEPHEN M. PILLIPOW
Solicitor for the Claimant,
Gamblers First Nation

THE W LAW GROUP
Barristers and Solicitors
300-110 21st Street East
Saskatoon, SK S7K 0B6

Telephone: (306) 244-2242

Direct Line: (306) 665-9530

Facsimile: (306) 652-0332

E-mail: spillipow@wlawgroup.com