

FILE NO.: SCT-7001-12
DATE: 20130926

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
TSLEIL-WAUTUTH NATION)	
)	Stan Ashcroft, for the Claimant
)	
Claimant)	
)	
– and –)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	James Mackenzie, Naomi Wright and
Affairs and Northern Development)	Deborah McIntosh, for the Respondent
)	
)	
Respondent)	
)	
)	
)	
)	HEARD: September 24, 2013

AMENDED ENDORSEMENT

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on September 24, 2013 at 1:00 P.M., Eastern Time (Ottawa).

[1] The parties reported that they had agreed to the market value of the land in question and they are also attempting to agree to the market value of the timber on the land. However, the Claimant takes the position that it will require its own separate experts to develop the values to be brought forward for purposes of compensation. The Respondent will likely therefore require

responsive experts. The Claimant observed that the agreed base value of the land was as of 1931, which was at the height of the Great Depression. The Claimant takes the position that in order to fulfill its fiduciary duty to the Claimant, the Crown would have recognized that land values were at their lowest and would have been obliged to look at historical values and trends to establish a true value rather than rely on the depressed value. The Respondent's expert will analyze this aspect. In respect of timber, if the parties agree to a 1931 value, the issue will then be bringing the agreed amount forward to present day dollars.

[2] If there is no agreement on the value of the timber, the issue of settlement privilege may be resurrected, with the result that the Claimant may bring an Application to produce a valuation report that had been developed earlier during the period the parties were dealing with the claim at the Ministerial level. The Respondent takes the position that that report is protected by settlement privilege. If there is no agreement on the base value of the timber in 1931 and if the earlier developed value is protected by settlement privilege the parties will require their separate experts to value the timber in question.

[3] The parties have not had the opportunity to discuss timber valuation in any depth but will do so by the next CMC and report whether they can agree on a base value for the timber. If they are unable to agree, the parties will advise the Tribunal whether an Application will be necessary on the settlement privilege question, and the details and timing of the Application will be determined then.

[4] The Respondent has assembled the Claimant's Trust Account records for the periods from 1906 to 1975 and April 1, 1983 to July 23, 2013. The Respondent is in the process of obtaining the balance of the Claimant's Trust Account records. The Respondent is collating and assembling these records and will be delivering them to the Claimant in the near future.

[5] The parties reported that they had identified a joint expert to prepare a report summarizing the contents of the Trust Records. They are in the process of drafting terms of reference for this expert, who will then be engaged and can begin immediately on the preparation of a report. The parties indicated that they would have their separate experts to prepare analytical reports on the Trust Account Summary Report.

[6] The parties reported that they had an Agreed Statement of Facts and a Common Book of Documents appropriate to the stage of the proceedings. These documents may be supplemented depending on the findings and reports of the experts and the resolution of the timber value issue.

[7] The Claimant confirmed that oral history will not be presented.

[8] The parties agree that the ultimate hearing should take place at the Federal Court facilities in Vancouver.

[9] A further CMC will be held in February 2014 at a date and time to be coordinated with the parties by the Registry. At that time, the parties will report their progress in the matters discussed above and address the necessary steps and timing for the hearing of an Application (if necessary) and final hearing, including the exchange of expert reports.

W.L. WHALEN

Honourable W.L. Whalen
Specific Claims Tribunal Canada