

FILE NO.: SCT-7001-14
DATE: 20170117

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)
)
TOBACCO PLAINS INDIAN BAND) Darwin Hanna and Mary Mollineaux, for the
) Claimant
)
Claimant)
)
- and -)
)
HER MAJESTY THE QUEEN IN RIGHT)
OF CANADA)
As represented by the Minister of Indian) Kelly Keenan and Ainslie Harvey, for the
Affairs and Northern Development) Respondent
)
Respondent)
)
)
)
) **HEARD:** January 16, 2017

ENDORSEMENT

Honourable Barry MacDougall

A Case Management Conference (CMC) was held by teleconference on January 16, 2017, at 1:00 P.M., Eastern Time (Ottawa).

[1] The Respondent reported that it intends to amend its Response to the Declaration of Claim to admit a breach of fiduciary duty owed for failing to properly value the 2.97 acre parcel taken in 1915 for customs purposes, following an agreement with the Claimant on the historical

valuation of the parcel being \$208 in 1915 dollars. The Claimant will determine whether it needs to amend its Declaration of Claim in turn, once it receives the Amended Response.

[2] The Respondent also reported that it would send a draft Document Agreement to the Claimant shortly.

[3] An issue arose as to whether the Claimant was intending to call expert evidence on the historical value of the Water Right-of-Way Claim. The Claimant had stated in its Pre-Hearing Conference brief at paragraph 4:

On December 2, 2016, the parties advised the Tribunal via a joint letter that they have not reached an agreement on the historical value of the Water Right-of-Way claim. It is the Claimant's position that the question of historical compensation for the breach of duty with respect to the Water Right-of-Way issue in the validity stage is limited to a determination of whether there was a breach of duty and whether the payment of no monies to the Claimant was adequate. It is the Claimant's position that it is more efficient and a better use of financial resources for the determination of the amount of historical compensation owed to the Claimant for the Water Right-of-Way breach be addressed at the compensation phase.

[4] The Respondent's Brief at paragraph 4 on this issue provided:

Water Right-of-Way

In a joint letter to the Tribunal dated December 2, 2016, the parties advised that they have been unable to reach agreement on the historical value of the water right-of-way. Although discussions continued on this issue, the parties remain unable to reach agreement. In accordance with the Order dated January 30, 2015, the question of historical compensation for the breach of duty with respect to the water right-of-way claim will be dealt with in the validity hearing.

[5] The Respondent was emphatic that, given the provision in the January 30, 2015 Consent Order of Mainville J. that the Claimant was still required to call its evidence on the historical valuation of the Water Right-of-Way issue at the Validity Hearing. The Claimant did not agree and repeated the argument as set out above.

[6] Neither Party however, made further specific reference to the contents of the December 2, 2016 letter that both Parties signed and sent to the Tribunal.

[7] Having now reviewed that letter, it is my view that the Parties clearly had come to an agreement that on the issue of the historical value of the Water Right-of-Way issue, there would

be no expert evidence called at the Validity Hearing and so advised the Tribunal. As the Respondent has acknowledged in its Response that the Claimant “...*is entitled to compensation for the use of land on the reserve from 1918 to 1970 in connection with the Water-Right-of-Way Claim,*” it makes practical sense to have all expert evidence on the Water Right-of-Way Claim presented at the Compensation Hearing of the Water Right-of-Way Claim.

[8] Accordingly, as the January 30, 2015 Order was on consent of the Parties, I find that the letter of December 2016 to the Tribunal was, in effect, the Parties’ consent to vary the Consent Order of January 30, 2015 with respect to the requirement of the Claimant to call expert evidence on the historical value of the Water Right-of-Way Claim. Therefore, the Claimant will neither have to either seek an amendment to the January 30, 2015 Order nor call expert evidence on this issue at the Validity Hearing.

BARRY MACDOUGALL

Honourable Barry MacDougall