

**FILE NO.:** SCT-7002-13

**DATE:** 20170327

**SPECIFIC CLAIMS TRIBUNAL  
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

<b>BETWEEN:</b>	)	
	)	
METLAKATLA INDIAN BAND	)	
	)	Michael Bissonnette and Brenda Gaertner,
	)	for the Claimant
Claimant	)	
	)	
<b>– and –</b>	)	
	)	
HER MAJESTY THE QUEEN IN RIGHT	)	
OF CANADA	)	
As represented by the Minister of Indian	)	John Russell, Michael Mladen and Terry
Affairs and Northern Development	)	McCormick, for the Respondent
	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	<b>HEARD:</b> March 15, 2017

**ENDORSEMENT**

**Honourable William Grist**

A Case Management Conference (CMC) was held by teleconference on March 15, 2017, at 2:00 P.M., Eastern Time (Ottawa).

**Expert Reports, Estimated Filing Schedule and Evidentiary Hearing**

[1] After hearing and considering the positions of both Parties, the Tribunal endorsed the following draft Plan of Proceeding (dates indicated being the serve and file estimated deadline):

- a. Respondent's Expert Handwriting Report: on or before **May 31, 2017**;
- b. Respondent's Responding Expert Surveyor Report: on or before **June 30, 2017**;
- c. Claimant's Responding Expert Handwriting Report and/or Supplementary/Reply Expert Surveyor Report: on or before **August 30, 2017**;
- d. Claimant's Expert Valuation Report: on or before **November 30, 2017**;
- e. Claimant's Historical Report on Valuation Issues: on or before **November 30, 2017**;
- f. Respondent's Responding Expert Valuation Report: on or before **May 31, 2018**, with a status report on or before **March 29, 2018**;
- g. Claimant's Supplementary/Reply Valuation Report: on or before **July 31, 2018**, with a status report on or before **June 29, 2018**; and,
- h. Common Book of Documents: on or before **August 31, 2017**.

[2] Two further reports which may be produced by the Respondent, depending on the Claimant's reports, include a Supplementary/Reply Expert Handwriting Report and a Responding Historical Report on Valuation Issues. On the latter Report, the Respondent indicated that it may need to engage an expert with similar expertise as the expert engaged by the Claimant. However, as only research is underway for this Report at this time, the Claimant is not able to confirm whether or not this report will include expert opinion(s).

[3] The Respondent also reserves the option to apply to amend or supplement its Responding Expert Surveyor Report, should new evidence emerge from the Claimant's Historical Report on Valuation Issues or through a potential oral history evidence hearing. The Respondent is granted leave to apply to amend its Responding Expert Surveyor Report should the Report be deemed insufficient or incomplete subsequent to further relevant evidence coming to light. Said Application may be dealt with through oral submissions at a CMC.

[4] The Claimant is in the process of determining whether any witnesses from the community will provide evidence at the hearing. The Claimant shall indicate what witnesses will testify (Elder and/or other lay witnesses), if at all, to the Respondent and Tribunal in writing on or before **November 30, 2017**.

[5] The Respondent has indicated a desire to obtain Will-Says from the Claimant. The Claimant indicated that Will-Says are not mandatory under the Tribunal's Rules, but that the Claimant would in good faith let the Respondent know the parameters of the evidence, should oral evidence be called. If Will-Says are to be produced, the Claimant will expect Will-Asks in return. This issue will be reviewed at the next CMC, by which time the Claimant will know whether Elder/lay witness evidence in fact will be called and the scope of that evidence.

[6] The Respondent requested particulars from the Claimant regarding its alleged loss of use claim. The Claimant reported that it is waiting for its expert appraiser to do this work. The Claimant also reported that there is potential for the oral history evidence to deal with loss of use, but that it could not confirm this at this time not knowing what this evidence might entail.

[7] The Parties are aiming for the beginning of the Claim's validity hearing to occur in October of 2018. The Claimant is estimating that two weeks might be required for the evidentiary hearing (there are potentially four expert witnesses who may testify and potential for community witnesses to testify as well), to be determined as the Claim proceeds (including whether the weeks may be split). Oral argument would be held separately at a later date.

### **Potential Application to Intervene by the Kitsumkalum Indian Band**

[8] Kitsumkalum Indian Band ("Kitsumkalum") has until March 27, 2017 to file its Application to Intervene in accordance with Tribunal Rules 34 and 45 (barring Kitsumkalum bringing a formal Application for an extension and being successful on that Application in accordance with Rule 44).

[9] The Parties agreed that following service of that Application, the Parties will promptly write to the Tribunal indicating whether they are prepared to consent or not to the Application. If one or both Parties are not prepared to consent, and if the Parties continue to desire more than the 10 days to respond as provided for under Rule 35, then the Parties shall attempt to come to an

agreement, together with Kitsumkalum, on the extension of time the Parties would need to file a response.

[10] If consent to such an extension is not obtainable, then the Tribunal will be available to the Parties to hear argument for why dispensing with or varying of Rule 35 should be granted in this case in accordance with Subrule 4(1).

**Order to Bifurcate the Claim’s Hearing**

[11] The Parties shall prepare a draft consent Order for the Tribunal’s adoption setting out how the Parties intend to bifurcate the Claim’s hearing into validity (including historical loss and present value for the “three categories of land”) and compensation phases (bring forward and any remaining compensation issues which may arise).

**Next CMC**

[12] The Parties shall be in contact with the Registry to schedule the next CMC on a date subsequent to November 30, 2017.

WILLIAM GRIST

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Honourable William Grist