

FILE NO.: SCT-5004-11
DATE: 20141017

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
KAHKEWISTAHAW FIRST NATION)	Stephen M. Pillipow and Adam Touet, for
)	the Claimant
)	
Claimant)	
)	
– and –)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	Lauri Miller and Donna Harris, for the
Affairs and Northern Development)	Respondent
)	
)	
Respondent)	
)	
)	
)	
)	HEARD: October 14, 2014

ENDORSEMENT AND ORDER

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on October 14, 2014, at 11:30 A.M., Eastern Time (Ottawa).

[1] The Claimant reported that the Joan Holmes & Associates Categorization Report had been delivered to the Respondent on August 27, 2014. However, it will require modification and

completion because the Expert did not have Band Council Resolutions from 1970 until the present. The Claimant discovered that it did not have BCR's beyond 1970. As a result, the Respondent is conducting research for more BCR's. This will likely take 6 to 8 weeks. From the time further BCR's are received, Joan Holmes & Associates will likely require a month to complete the Categorization Report.

[2] The Parties are working on an Agreed Statement of Facts and a Common Book of Documents, but these cannot be completed until the Categorization Report is finalized.

[3] Upon the consent of the Parties and pursuant to Rule 10 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, **THE TRIBUNAL ORDERS THAT:**

- a. The hearing of the Claim shall proceed in two separate stages, in order to deal with issues of validity and compensation respectively;
- b. The Tribunal will first hold a hearing and render its decision on the validity and will determine a base value of loss (if validity is found) of the Claim ("Validity Stage");
- c. The second stage of this Claim pertaining to compensation, including the principles of compensation, dealing with the carry forward of the base amount, and any applicable compensation criteria ("Compensation Stage"), will only proceed if the Claim is found to be valid. The Compensation Stage will not begin until the Validity Stage has been completed, the issue(s) of validity and liability, if any, decided, and the Parties have exhausted any rights they may have for judicial review to the Federal Court of Appeal or appeal to the Supreme Court of Canada;
- d. If the Claim is ultimately determined to be valid, the Parties will have a reasonable amount of time to gather evidence relating to compensation, including expert evidence, before the Compensation Stage begins;

- e. The Parties may delay taking steps to prepare their cases on compensation until a determination is made on validity; and,
- f. In relation to this Order of Bifurcation, there shall be no costs awarded to either party.

[4] Leave is granted to the Respondent to bring an Application to determine the admissibility of the Seven Oaks Report that the Claimant otherwise proposes to adduce at the hearing. The Application will be heard by videoconference on Friday, January 23, 2015, at 10:30 A.M., Eastern Time (Ottawa). The Application with Memorandum of Fact and Law are to be served and filed by November 14, 2014. The Claimant's Response with Memorandum of Fact and Law, plus affidavit evidence if required, are to be served and filed by December 12, 2014, and a Reply will be served and filed by January 9, 2015, if necessary. The hearing date presumes that if affidavit evidence is by the Claimant it will not require reply affidavit or cross-examination. Otherwise, the hearing date may have to be rescheduled.

[5] The next CMC will take place by videoconference on Friday, January 23, 2015, immediately following the hearing of the Application.

W.L. WHALEN

Honourable W.L. Whalen