SCT File No.: SCT -7007-11

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Aboriginal Affairs and Northern Development Canada

Applicant

DOIG RIVER FIRST NATION

Respondent

AND:

BLUEBERRY RIVER FIRST NATIONS

Respondent

DOIG RIVER FIRST NATION AND BLUEBERRY RIVER FIRST NATIONS JOINT RESPONSE TO APPLICATION and ARGUMENT

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PART I - OVERVIEW

1. This is the joint response of the Doig River First Nation ("DRFN") and Blueberry River First Nations ("BRFN") (together, the "Claimants") to the Respondent Canada's application and written submission filed January 9, 2015 (the "Application") to have various documents (the "Fort Nelson Documents"; the "ILRS Documents" and the "Galibois Transcripts", collectively, the "Documents") admitted into evidence for the hearing on the validity stage of the claim, which will determine whether Canada is liable to the Claimants for breach of fiduciary duty (the "Validity Stage").

2. The Claimants oppose the admission of the Documents. Canada's application is an attempt to pursue irrelevant and non-probative lines of inquiry well past agreed upon timelines, to the prejudice of the Claimants and affecting the just, timely and cost-effective resolution of this stage of the claim.

3. None of the Documents meet the requisite standard for admissibility. The Fort Nelson Documents and ILRS Documents are not relevant and have no probative value and are therefore inadmissible. The Galibois Transcripts are *prima facie* inadmissible hearsay, and Canada has not established that the transcripts should be otherwise admitted.

PART II - STATEMENT OF FACTS

4. The process for preparation and exchange of evidence and argument for the hearing on the validity stage of the Claim has been in place since July, 2014. The Tribunal directed the parties upon consent to serve and file documents as follows:

> (a) Agreed Statement of Facts, Agreed Statement of Issues and Common Book of Documents on or before September 26, 2014;
>
> (b) Claimants' written arguments and list of authorities (including legislation and regulations) on or before December 12, 2014;
>
> (c) Respondent's written argument and list of authorities (including legislation and regulations) on or before January 23, 2015;
>
> (d) Claimants' written arguments in reply and list of authorities (including legislation and regulations) on or before February 3, 2015;

(e) Claimants' and Respondents' Casebooks containing complete copies of all authorities, legislation and regulations that may be referred to in submissions on or before February 3, 2015.

Reference: Amended Endorsement and Order of Whalen J., August 22, 2014 at para. 6, amending Endorsement and Order, July 28, 2014

5. All parties have stated that they would not be relying on *viva voce* evidence in relation to the hearing of the Validity Stage of the claim.

Reference: Endorsement and Order of Whalen J., May 30, 2014;
Amended Endorsement and Order of Whalen J., August 22, 2014

6. In accordance with the endorsed schedule above, the Common Book of Documents was filed on September 26, 2014. When filing the Common Book of Documents, the parties advised the Tribunal that several of the documents included therein were of poor quality and that the parties were still seeking better copies. The parties committed to providing the Tribunal with better copies or transcriptions and including them in an Amended Common Book of Documents no later than October 31, 2014.

Reference: Common Book of Documents filed September 26, 2014;
Affidavit #1 of Kate Kerans at para 2 and Exhibit "A"

7. The parties provided the Tribunal with an Amended Common Book of Documents on October 31, 2014. As had been previously indicated, the amendments were comprised of the replacement of seven documents with better copies and the addition of a certified copy of a document already listed (OIC 1655).

Reference: Amended Common Book of Documents filed October 31, 2014

8. On November 26, 2014, Canada wrote to the Claimants to advise that they had "come across some additional documents that we may rely on in argument". Canada also advised that it intended to put the Fort Nelson Documents, which the Claimants had previously objected to being included in the Common Book of Documents on the grounds of relevance, into a "Respondent's Book of Documents". Other than the Fort Nelson Documents, the "additional documents" consisted of correspondence from the years 1950 through 1952 (the "Additional Mineral Rights Documents") concerning the

mineral rights in IRs 204, 205 and 206 (the "Replacement Reserves"), and the Galibois Transcripts. Canada made no reference to the ILRS Documents in this correspondence.

Reference: Affidavit #1 of Sukvir Bahia ("S Bahia") ex "F"

9. The Claimants consented to the Additional Mineral Rights Documents going before the Tribunal and recommended that they be included in a Further Amended Common Book of Documents to be filed as soon as possible. The Claimants objected to the admission of the Galibois Transcripts and reiterated their objection to the Fort Nelson Documents. Canada filed the Further Amended Common Book of Documents, which included the Additional Mineral Rights Documents, on December 18, 2014.

Reference: S Bahia ex "H";
Further Amended Common Book of Documents filed December 18, 2014

10. In accordance with the endorsed schedule, the Claimants filed their written argument on the Validity Stage on December 12, 2014.

Reference: Claimants' Argument on Validity Stage filed December 12, 2014 ("Claimants' Validity Argument")

A. THE ILRS DOCUMENTS

11. The Application filed January 9, 2015 is the first reference Canada has made to the ILRS Documents. Prior to filing its Application, Canada did not advise the Claimants of its intention to seek the admission of the ILRS Documents, or provide the Claimants with copies.

Reference: Canada's Application filed January 9, 2015 ("Application") at para 22

B. THE GALIBOIS TRANSCRIPTS

12. According to Canada's evidence, it received the Galibois Transcripts on October 9, 2014. Canada did not advise the Claimants of its intention to rely on the Galibois Transcripts or provide the Claimants with copies of the same until November 26, 2014, almost seven weeks after Canada received them.

Reference: S Bahia at para. 11;
S Bahia ex "F"

13. The Galibois Transcripts are the transcripts of testimony sworn as part of proceeding no. T-4178-78, which eventually went to trial as *Blueberry River Indian Band v. Canada* ["*Apsassin*"].

Reference: *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development) (1987),* 14 FTR 161 ["*Apsassin*"];
Canada's Case Management Brief dated July 18, 2012 at 1;
S Bahia at para. 7

C. THE FORT NELSON DOCUMENTS

14. On September 22, 2014, Canada provided the Claimants with an Index of the Respondent's Proposed Common Book Selections. The Index included the Fort Nelson Documents. On September 23, 2014, BRFN wrote to Canada questioning the relevance of the Fort Nelson Documents. On September 25, 2014, BRFN confirmed its position that it opposed inclusion on the basis that the Fort Nelson Documents are not relevant to this proceeding. The Common Book was filed on September 26, 2014, excluding the Fort Nelson Documents.

Reference: S Bahia ex C;
S Bahia ex E

15. Two months later, on November 26, 2014, Canada advised the Claimants of its intention to rely on the Fort Nelson Documents, despite the Claimants' objections.

Reference: S Bahia ex "F"

PART III - SUBMISSIONS

A. THE ILRS DOCUMENTS AND FORT NELSON DOCUMENTS ARE NOT RELEVANT AND INADMISSIBLE

16. In response to paragraph 30 of Canada's Application, it is trite law that "[e]vidence is not admissible unless it is… relevant".

Reference: Sopinka, Lederman & Bryant, *The Law of Evidence in Canada,* 4th ed. (Markham: LexisNexis Canada Inc., 2014) at 51 ["Sopinka et al"]

17. The Specific Claims Tribunal has previously considered the issue of admissibility of documents of which the relevance to the claim at hand is questioned. In *Lac La Ronge Band v. Canada*, the Honourable Johanne Mainville set out the necessary legal considerations applicable to a relevancy analysis:

> In *The Law of Evidence*, 6th ed, (Toronto: Irwin Law, 2011) at 34, the authors D. Paciocco and L. Struesser explain the relevancy of evidence as follows:
>
> > Information can be admitted as evidence only where it is relevant to a material issue in the case.
>
> They add:
>
> > Evidence is relevant where it has some tendancy as a matter of logic and human experience to make the proposition for which it is advanced more likely than that proposition would be in advance of that evidence. (*Ibid* at 27)
>
> The authors Bryant et al. (*Law of Evidence, supra* para 30 at 53), state:
>
> > 2.38 A fact will be relevant not only where it relates directly to the fact in issue, but also where it proves or renders probably the past, present or future existence (or non-existence) of any fact in issue.
>
> Referring to the Supreme Court of Canada's decision in *R. v. Morris*, [1983] 2 SCR 190, the authors wrote:
>
> > 2.49 Although McIntyre J. agreed that the probative value of this evidence was low, it was an error for the judge to confuse relevance with weight. (…) Without relevance the evidence can have no weight.>> (*Bryant et al, "Law of Evidence," supra* para 30 at 56-57)
>
> Reference: *Lac La Ronge Band and Montreal Lake Cree Nation v. Canada*, 2013 SCTC 02 at paras 56-59 ["*Lac La Ronge, Evidence Decision*"]

18. Although Section 13(1)(b) of the *Specific Claims Tribunal Act* provides the Tribunal with additional discretion to accept evidence "whether or not that evidence or information is or would be admissible in a court of law", this does not support Canada's suggestion that the Tribunal need not consider the relevance of the documents and legal requirements for admissibility of evidence. In its decisions on admissibility of evidence, the Tribunal has

undertaken a traditional legal analysis of admissibility, based on common law rules of evidence, prior to considering exercise of any residual discretion to admit evidence conferred by Section 13(1)(b).

Reference: *Specific Claims Tribunal Act*, S.C. 2008, c. 22 ["SCT Act"]
Canada's Application, at para 30;
Lac La Ronge, Evidence Decision;
Beardy's & Okemasis Band #96 and #97 v. Canada, 2013 SCTC 6

1. **These documents are not relevant to whether Canada breached its fiduciary duty with respect to the Replacement Reserves**

19. The ILRS Documents and Fort Nelson Documents are not admissible because they are irrelevant to the allegations of the Claimants, which relate solely to the subsurface rights in the Replacement Reserves and Canada's fiduciary duty to the Claimants in the acquisition of the Replacement Reserves. The Claimants have not alleged breach of fiduciary duty against Canada in relation to reserves set aside for Fort Nelson, Prophet River, or the other First Nations as referred to in the documents. Neither the ILRS Documents nor the Fort Nelson Documents mention the Replacement Reserves and are consequently not relevant.

20. Examination of fiduciary law and the facts in issue in the within claim, as disclosed in the pleadings, confirms that, on application of logic and common sense, the ILRS Documents and Fort Nelson Documents, which pertain to the reservation of mineral rights by BC in transfers of land to Canada for other reserves set aside for other First Nations, bear no relevance to existence or breach of a fiduciary duty in the claim at hand.

21. The Courts and this Tribunal have held that an errant fiduciary cannot rely on uncertainty caused by its own breach to escape liability:

> Rothstein J. held further in *Fairford* that what might have occurred and what the province might have agreed to had Canada acted in a timely manner did not absolve Canada from its liability for the breach that had actually occurred. In other words, a retrospective assessment of what might have taken place was of no consequence in addressing the breach that had actually occurred…

Reference: *Huu-ay-aht First Nation v. Canada*, 2014 SCTC 7 at para 78;
Fairford First Nation v. Canada (Attorney General), [1999] 2 C.N.L.R. 60 (FC) at paras 228, 285;
London Loan & Savings Co. of Canada v. Brickenden, [1934] 2 WWR 545 at 550-551, 3 DLR 465 (aff'g [1933] SCR 257)

22. The Tribunal will decide at the hearing on the Validity Stage whether or not Canada's failure to inform itself of the nature of the interest being purchased constitutes a breach of fiduciary duty. Evidence of how BC may have responded *had Canada properly informed itself* is irrelevant, regardless of whether the Tribunal ultimately decides in favour of the Claimants.

23. Further, and in response to the assertions in paragraph 29 of Canada's Application, any inability Canada may have had to control the behaviour of a third party, BC, which inability is denied, has no bearing on the application of principles of fiduciary obligation and Canada's complete discretionary control over the Claimants' interest in acquiring Replacement Reserves.

24. On this point, Canada's Application parallels arguments made by it in *Lac La Ronge*, at the validity hearing of that claim. The Tribunal rejected Canada's argument:

> [w]hile the Respondent emphasized its inability to control the behaviour of third parties, the principles of fiduciary obligation cited previously are grounded on the Crown's assumption of discretionary control over a cognizable interest, in this case the Claimant's surrendered timber. When the Crown accepted the Claimant's surrender and embarked on the tender process, the dual criteria from *Wewaykum* of a cognizable interest and undertaking of discretionary control invoking fiduciary obligations in the nature of private law duties were met.

Reference: *Lac La Ronge and Montreal Lake Cree Nation v. Canada*, 2014 SCT 8 at para 92 ["*Lac La Ronge, Validity Decision*"]

25. Similarly, when Canada accepted the Claimants' surrender of I.R. 172, and embarked on the identification and acquisitions of lands for the Replacement Reserves, the dual criteria of a cognizable interest and undertaking of discretionary control invoked the fiduciary obligations, as set of out the Claimants' argument on the validity stage of this claim.

Reference: Claimants' Validity Argument

26. Canada assumed discretionary control over the Claimants' interests in the Replacement Reserves and the acquisition of the lands for those reserves. Whether or not Canada had control over BC's behaviour in the bargain to acquire the lands for the Replacement Reserves is of no relevance, it held complete discretionary control over the Claimants' interests in that transaction.

2. **The Tribunal should not exercise its discretion, if any, to accept irrelevant evidence**

27. In further response to paragraph 30 of Canada's Application, Canada's assumption that the irrelevance of the Fort Nelson Documents and the ILRS Documents does not preclude the same from being admissible or can be dealt with by an assessment of weight is incorrect, and not the approach that ought to be taken by this Tribunal.

28. While section 13(1)(b) of the *Specific Claims Tribunal Act* provides the Tribunal with discretion to accept evidence potentially not admissible in a court of law, in the *Lac La Ronge Evidence Decision* Justice Mainville noted that "it is not clear that the Tribunal's discretion to accept evidence that would not otherwise be admissible in a court of law extends to irrelevant evidence." That issue was not decided, as Mainville J. found she would not exercise her discretion, if any, to accept the document in any event.

Reference: *Lac La Ronge Evidence Decision* at para 63

29. Admission of evidence not relevant to the determination of the facts in issue is contrary to the purposes of the *Specific Claims Tribunal Act*, to "resolve specific claims and … adjudicat[e] such claims in accordance with law and in a just and timely manner" and to the administration of justice.

Reference: SCT Act, preamble

30. Admission of the contested documents may require the parties to conduct further research and investigations and file additional evidence concerning the context surrounding the negotiations for reserve lands between Canada and BC for the Fort Nelson Indian Band, Ulkatcho, Canim Lake, and Yekooche Indian Bands, with potential delay and increased costs to all parties as a result. Additionally, the pitfalls of opening a debate regarding

other potential claims not before the Tribunal were highlighted by Mainville J. in the *Lac La Ronge Evidence Decision*.

Reference: *Lac La Ronge Evidence Decision* at paras 64-65

31. The Fort Nelson Documents and the ILRS Documents have no probative value in these proceedings. Irrelevant documents cannot inform the Tribunal's analysis and can have no weight in the Tribunal's deliberation of the issues before it, and therefore should not be admitted.

B. THE GALIBOIS TRANSCRIPTS ARE INADMISSIBLE HEARSAY

32. Both the *Specific Claims Tribunal Act* and *Rules* are silent on the admissibility of evidence from prior court proceedings. At common law, statements made by a witness in a prior adjudicative proceeding ("prior testimony") is hearsay and *prima facie* inadmissible.

Reference: SCT Act;
Specific Claims Tribunal Rules of Practice and Procedure, SOR/2011-119 ["SCT Rules"];
R. v. Hawkins [1996] 2 S.C.R. 1043 at para 58-60 ["*Hawkins*"];
Walkerton (Town) v. Erdman Estate (1894), 23 S.C.R. 352

33. The Ontario Court of Appeal in *Smith v. Goulet* summarized the policy concerns regarding the admission of prior testimony, in affirming the lower court's rejection of evidence from a prior judicial proceeding:

> The underlying purpose of the limitation with respect to the admissibility of prior testimony is to ensure that the party opponent against whom it is now sought to be introduced is protected by **the existence of a sufficient motive to cross-examine the witness adequately in the prior proceeding with respect to the subject-matter on which his testimony is now offered.** That protection does not exist unless the issue to which the testimony related in the former proceeding is substantially the same issue as that in relation to which it is sought to be introduced in the subsequent proceedings.

Reference: *Smith v. Goulet*, [1974] O.J. No. 2061 at para 24 [emphasis added].

34. The identity of issues is not determined through a technical assessment of the causes of action in the two proceedings. Rather, it is an "identity of interest" in the sense of the motive of the party conducting the cross-examination.

Reference: Sopinka et al at 362

35. Justice Smith, in his ruling on Canada's motion to strike in the within Claim, identified the "focus" of the *Apsassin* litigation as the loss of mineral rights in I.R. 172:

> The *Apsassin* litigation focused on the loss of mineral rights in I.R. 172 following its surrender and sale. The original 1978 Statement of Claim in *Apsassin*, before the Federal Court, also included a pleading "in the alternative" for a declaration regarding mineral rights in the Replacement Reserves. However, in 1986, before trial, the plaintiffs amended their pleadings to remove the alternative claim and focused on I.R. 172 – including allegations that the 1945 surrender of I.R. 172 and 1948 transfer of I.R. 172 were void, voidable or of no effect with respect to mineral rights in I.R. 172.

Reference: 2014 SCTC 2 at para 69

36. Even prior to the 1986 amendment that removed the claim for a declaration regarding mineral rights in the Replacement Reserves, the focus of the litigation was on the loss of mineral rights in I.R. 172. The claim relating to the Replacement Reserves was always pleaded in the alternative. Accordingly, the material issues to which Mr. Galibois' testimony related in *Apsassin* were not substantially the same as in this Claim.

37. It is certainly possible, and even probable, that counsel chose to focus the examination of Mr. Galibois on the issues central to the *Apsassin* litigation, which concerned the validity of the surrender of IR 172, rather than upon an alternative argument subsequently dropped altogether. This raises sufficient doubt as to the "identity of interest" of legal counsel cross-examining Mr. Galibois almost 35 years ago and legal counsel arguing this Claim – which is focused solely on the mineral rights in the Replacement Reserves – before the Tribunal.

Reference: 2014 SCTC 2 at paras 69-71

38. To admit the Galibois Transcripts into evidence in this Claim would be to force the Claimants to rely on the sufficiency of cross-examination conducted more than three decades ago in a different proceeding that focused on different issues. Certainly, had one of the central issues in the *Apsassin* litigation been the mineral rights in the Replacement Reserves, one would have expected a robust cross-examination on the evidence pertaining to that issue. However, that is not the case. Instead, if Canada's efforts to admit the Galibois Transcripts into evidence succeed, the Claimants will be denied the opportunity to cross-examine the witness with respect to his evidence related to the purchase of the Replacement Reserves that are now central to this Claim but which were not material to the *Apsassin* litigation. Such a consequence would validate all of the concerns the courts have raised that render prior testimony *prima facie* inadmissible in the first place.

Reference: 2014 SCTC 2 at para 76;
Smith v. Goulet

39. Additionally, the trier of fact in the *Apsassin* litigation made a point of setting out his concerns with the reliability of the transcripts from the commission evidence. Not only did Justice Addy take issue with the manner in which the examinations were conducted, but he had the benefit of viewing the commission evidence on videotape while he read the transcripts and noted that his impression of the evidence changed when viewing the videotape:

> In the case at bar, the taking of commission evidence was not controlled and counsel generally examined the witnesses as if they were conducting examinations for discovery of parties to the action. Finally, and perhaps most importantly, in the case of the witnesses who testified in the English language, it became abundantly clear that in many instances, the transcript, although faithfully reproducing the spoken words, often failed to convey to the reader the true meaning of and conclusions to be drawn from the witnesses' answers. One can well imagine the even greater discrepancies which occur when the text of the transcript is the product of an interpretation.
>
> Although appellate tribunals have for many years quite properly adopted the principle that one must proceed very cautiously before relying on a

> transcript of testimony to vary or reverse a finding of fact resulting from oral evidence, the basic validity of that principle becomes crystal clear when one listens to and observes videotaped evidence with the written text in hand. It also brings to light the obvious advantage of having videotaped evidence at hand as part of the record where any question might arise on appeal as to the validity of a finding of fact in the context of certain answers of a witness. The spoken word and the visual impression are both preserved as part of the record to explain and at times to modify and even upset the conclusions that one might otherwise come to by a mere reading of the transcript. **Having read the transcripts previously, I was quite surprised to note the degree to which some of my original impressions as to the effects of the evidence were either modified or completely changed upon viewing the actual videotaped recordings.**
>
> Reference: *Apsassin* at paras 29-30 [emphasis added]

40. Introducing the Galibois Transcripts into these proceedings would put unreliable, incomplete evidence before the Tribunal. The trial judge in *Apsassin* had access to a complete evidentiary record in reaching his decision, including videotape of Mr. Galibois' testimony, exhibits that were placed before Mr. Galibois during the taping of his testimony and the videotaped commission evidence and *viva voce* evidence of a number of other individuals who had knowledge of the same events that were addressed by Mr. Galibois. At the eleventh hour of these proceedings, Canada has selectively chosen the transcript evidence of one witness from the *Apsassin* litigation and asks the Tribunal to admit it as evidence in these proceedings. This is prejudicial.

41. As early as July 10, 2012, in preparation for Canada's application to strike, Canada advised this Tribunal that it had acquired and disclosed "all pleadings, transcripts and final submissions made at trial" in *Apsassin*. Certainly Canada could have ascertained at that point whether it wanted to introduce evidence from the *Apsassin* trial, including the Galibois Transcripts, which were referred to in the *Apsassin* trial decision and extensively in the trial transcripts. Had Canada brought this matter forward at that time, rather than delaying for over two years, the Parties would have had ample time to fully explore the evidentiary record from the *Apsassin* trial and decide whether and how the evidence could be of use to the Tribunal in hearing this Claim.

42. It is well-established in the common law that a trier of fact has residual discretion to exclude otherwise admissible evidence if its prejudicial effect outweighs its probative value:

> Concerns over trial fairness not only permeate the decision on admissibility, but also inform the residual discretion of the trial judge to exclude the evidence even if necessity and reliability can be shown. As in all cases, the trial judge has the discretion to exclude admissible evidence where its prejudicial effect is out of proportion to its probative value.

Reference: *R. v. Khelawon*, 2006 SCC 57 at para 3

43. The purpose of the Rules, under which Case Management Conferences are administered, is "to secure the just, timely and cost-effective resolution of the specific claim while taking the cultural diversity and the distinctive character of specific claims into account."

Reference: SCT Rules, s 2

44. Canada is attempting to have further evidence added to the record four months after the endorsed date. Some of this evidence is transcript evidence from another proceeding, when Canada has already indicated it did not plan to call *viva voce* evidence. This flaunts the process endorsed by the Tribunal and affects the timely and cost-effective resolution of the claim.

PART IV - RELIEF SOUGHT

45. For all of these reasons the Claimants seek the following orders:

(a) Canada's application is dismissed;

(b) In the alternative, if Canada's application is partially or wholly successful, then with respect to those documents which are admitted, the Claimants will have opportunity to:

(i) make inquiry and investigation for additional evidence, including demands for further production from Canada;

(ii) have that additional evidence admitted; and,

(iii) make argument on any new document admitted as a consequence of the order.

(c) Costs; and,

(d) Such further relief as this honourable Tribunal deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED: January 19, 2015

Counsel for Doig River First Nation
Allisun Rana

Counsel for Blueberry River First Nations
James Tate

PART V - MATERIAL TO BE RELIED ON

Evidence:

1. Affidavit #1 of Kate Kerans, sworn January 19, 2015

Legislation:

1. *Specific Claims Tribunal Act*, S.C. 2008, c. 22
2. Specific Claims Tribunal Rules of Practice and Procedure, SOR 2011-119

Case Law:

1. *Beardy's & Okemasis Band #96 and #97 v. Canada*, 2013 SCTC 6
2. *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)* (1987), 14 FTR 161
3. *Doig River First Nation and Blueberry River First Nation v. Canada*, 2014 SCTC 2
4. *Fairford First Nation v. Canada (Attorney General)*, [1999] 2 CNLR 6) (FCTD)
5. *Huu-ay-aht First Nation v. Canada*, 2014 SCTC 7
6. *Lac La Ronge Band and Montreal Lake Cree Nation v. Canada*, 2014 SCTC 8
7. *Lac La Ronge Band and Montreal Lake Cree Nation v. Canada*, 2013 SCTC 02
8. *London Loan & Savings Co. v. Brickenden*, [1934] 2 WWR 545 (HL)
9. *R. v. Hawkins*, [1996] 2 SCR 1043
10. *R. v. Khelawon*, 2006 SCC 57
11. *Smith v. Goulet*, [1974] O.J. No. 2061 (QL), 50 DLR (3d) 321
12. *Walkerton v. Erdman Estate* (1894), 23 SCR 352

Texts:

1. Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 4th ed. (Markham: LexisNexis Canada Inc., 2014)