

FILE NO.: SCT-7006-11
DATE: 20160210

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
HUU-AY-AHT FIRST NATIONS)	
)	Kate Blomfield and Emma Hume, for the
)	Claimant
Claimant)	
)	
– and –)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	James Mackenzie, Erin Tully and Anusha
Affairs and Northern Development)	Aruliah, for the Respondent
)	
)	
Respondent)	
)	
)	
)	
)	HEARD: February 2, 2016

ENDORSEMENT AND ORDER

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on February 2, 2016, at 4:00 P.M., Pacific Time (Vancouver).

[1] There was discussion about recent communication by the Claimant with the Tribunal in connection with the hearing scheduled to take place commencing February 8, 2016, and other than in respect of routine filings, or in the context of a scheduled CMC or other formal hearing

setting. Upon consent, it is directed that such communications with the Tribunal should only be made:

- (a) upon the prior agreement of the Parties, or;
- (b) upon the direction of a judge of the Tribunal, or;
- (c) upon application pursuant to the *Rules* of the Tribunal by one of the Parties for a CMC to deal with the matter(s) of concern.

[2] Upon the request of the Claimant to withdraw the correspondence filed with the Tribunal dated January 29, 2016 and February 1, 2016, the Tribunal orders that the correspondence dated January 29, 2016 and February 1, 2016 shall be struck from the record.

[3] The Parties reported that neither they nor their experts had been able to agree to a written outline of what their experts agreed upon and what they did not agree upon. A letter in that regard will therefore not be submitted to the Tribunal.

[4] The Claimant had filed an Amended Schedule that it believed reflected the consensus of the Parties. However, the Respondent expressed concern that there would not be enough time to complete next week's hearing, particularly if oral submissions were entertained after the completion of expert testimony. After discussion, it was agreed that oral submissions after the completion of testimony at this hearing would not be necessary given that time had been scheduled in the future to receive oral submissions preceded by the usual filing of written submissions. It would be better to give priority to the testimony and to make sure that it was fully presented and dealt with. Accordingly, there will be no oral submissions immediately following the experts' testimony at the impending hearing.

[5] The Claimant confirmed that it had delivered Chief Dennis' Will-Say statement to the Respondent on January 25, 2016 and that in reply to the Respondent's request it had delivered further particulars about Chief Dennis' anticipated testimony on January 29, 2016. The Claimant indicated that the request for further particulars had been satisfied and that nothing more would be delivered in that regard.

[6] The Claimant had recently delivered documents to the Respondent together with a request to admit those documents. The Claimant explained that these documents had already

been produced by the Respondent but might not be in the Common Book of Documents. The Claimant wished to be able to cross-examine on them at the hearing. The Respondent took no position subject to reviewing the documents, which it indicated it would do as quickly as possible.

[7] The Respondent reported that it had now provided its experts' working file with the delivery of further materials on February 1, 2016. The Claimant indicated that it would not now be pursuing its Application in respect of admissibility of the Respondent's experts' report.

[8] As discussed at an earlier CMC, the Respondent's experts proposed using a power point presentation in the course of their testimony at the hearing starting February 8, 2016. As agreed, the Respondent had provided the Claimant with copies of the slides to be used in the proposed power point presentation. As a result, the Claimant brought an Application on short notice objecting to the use of the power point presentation, and in particular certain slides, because they introduced new information or matters not covered in the filed experts' reports, including evidence from another matter dealing with the same issue. The Claimant took the position that this was contrary to the Tribunal's *Rules* in respect of time and amounted to an amendment of the experts' report that would be prejudicial to the Claimant in terms of its ability to prepare and respond. The Respondent submitted that the information in the particular slides had been known to the Claimant's expert since 2009, that the experts on both sides had conferred about it in 2013, and that it therefore presented no prejudice to the Claimant. Because the compensation issue is being considered by other courts across the country and because the decision in this matter might produce one of the first decisions on the question of carrying forward damages in the context of a claim by First Nations, the Respondent submitted that the Tribunal should have the benefit of the most current and complete information possible.

[9] For Reasons given orally, it is directed that the use of the proposed power point must be confined to the presentation of information and opinions already expressed in the Respondent's experts' report filed and will not present new information or opinions not already expressed in that report.

[10] Schematics contained in the power point presentation that do not use new information may be used only with the Claimant's consent.

W.L. WHALEN

Honourable W.L. Whalen