

FILE NO.: SCT-3001-16
DATE: 20170622

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
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BIG GRASSY)	
(MISHKOSIIMIINIIZIIBING) FIRST)	
NATION (INDIAN BAND) AND)	Donald R. Colborne, for the Claimants
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NATION (INDIAN BAND))	
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Claimants)	
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- and -)	
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HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	Lisa Cholosky, for the Respondent
As represented by the Minister of Indian)	
Affairs and Northern Development)	
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Respondent)	
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)	
)	HEARD: May 25, 2017

ENDORSEMENT

Honourable Paul Mayer

A Case Management Conference (CMC) was held by teleconference on May 25, 2017, at 4:30 P.M., Eastern Time (Ottawa).

Discussion

[1] The Respondent has decided that it will not be amending its Response to the Declaration of Claim to admit validity or liability at this time. However, the Respondent continues to be prepared to enter Tribunal assisted mediation (“mediation”) with the belief that it can reach a settlement, provided three preconditions to entering mediation are satisfied:

- (1) The Parties are able to negotiate and agree to a Mediation Agreement;
- (2) The Parties can obtain sufficient evidence on historic losses and other compensation as being claimed by the Claimant; and
- (3) The litigation of this Claim before the Tribunal is placed in abeyance as long as the Parties are engaged in mediation.

[2] On the first precondition, Counsel for the Parties are making progress on a draft Mediation Agreement for another claim before the Tribunal between the same Parties, working from the Tribunal’s template Mediation Agreement. Counsel are close to finalizing a draft Mediation Agreement which will require final client approval.

[3] On the second precondition, the Respondent is considering whether documents from another file of the Claimant dealing with the same geographic area can be used to assist with the quantification of historical loss and any other compensation for this Claim. The Claimant believes that any perceived issues of privilege over this available compensation evidence will be overcome by the Parties.

[4] On the third precondition, the Tribunal and Claimant expressed some reservation about placing the Claim in abeyance until such time as it is clear that mediation will commence in an expedient fashion as hoped. Towards this goal, the Parties agreed that claim resources, efforts and time should be focused exclusively on preparing for and entering into mediation, placing the Claim in unofficial abeyance pending progress over the coming months towards mediation.

[5] Provided the three preconditions can be met, the Parties are aiming for mediation to begin in Fall 2017, though subject in particular to the timing of the second precondition.

[6] The Parties agreed that mediation can proceed without a fully formed financial mandate from either side, provided they intend to mediate in good faith and have a process in place to make best efforts to obtain a financial mandate once and if a tentative Settlement Agreement is obtained. In particular, from the Respondent's mandating end, entering into mediation in this manner would allow for a more efficient and flexible process, as it would avoid further time delay which would come with seeking a full financial mandate before the mediation; as well as avoid potential complications stemming from a fully formed position on liability and loss which could unduly constrain the parameters or success of the mediation process. This approach would also avoid duplication of work if another financial mandate would need to be sought by the Parties as a result of the mediation in any event.

[7] On the matter of seeking final approval for any tentative Settlement Agreement which may be reached between the Parties, the Respondent estimates that it could take up to four months to obtain necessary approvals, though ultimate timing will depend on the settlement amount tentatively agreed to and the corresponding level of approval required by the Respondent. The Claimant may require any tentative Settlement Agreement be put to a community ratification vote.

Action Items

[8] On or before **July 4, 2017**, the Parties shall file their draft, non-executed Mediation Agreement with the Registry and update the Tribunal on progress made towards quantifying claim compensation.

[9] The issue of the Claimant's oral history evidence hearing date and Will-Say Statements, and a potential section 22 Notice to the Province of Ontario shall be revisited once the matter of mediation is settled. The Claimant noted in its brief that oral history evidence may not be required for this Claim, depending on the contents of the Mediation Agreement and other materials for the mediation.

[10] The next CMC will be held together with claim SCT-3002-16 by teleconference on **July 6, 2017**, at 4:30 P.M., Eastern Time (Ottawa). Whether mediation may occur in Fall of 2017 as hoped will be the main order of business.

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Honourable Paul Mayer