

FILE NO.: SCT-1001-12
DATE: 20130930

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)
)
MADAWASKA MALISEET FIRST)
NATION) J. Richard Hatchette and Patricia Bernard,
) for the Claimant
)
Claimant)
)
- and -)
)
HER MAJESTY THE QUEEN IN RIGHT)
OF CANADA) Reinhold Endres, for the Respondent
As represented by the Minister of Indian)
Affairs and Northern Development)
)
)
Respondent)
)
)
) **HEARD:** September 24, 2013

AMENDED ENDORSEMENT

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on September 24, 2013 at 10:00 A.M., Eastern Time (Ottawa).

[1] The parties reported that they were cooperating in the preparation of an Agreed Statement of Facts and a Common Book of Documents, but completion was dependent upon receipt and review of expert reports, hopefully by the end of April 2014.

[2] The parties indicated that they had agreed to joint terms of reference for their respective experts, who have been retained and who have indicated that their reports will be completed by the end of January 2014.

[3] The Claimant has raised its desire to allege breach of fiduciary duty as an alternative basis for the claim. The Respondent indicated its first awareness of this possible basis of claim was at the last CMC and that it was taken by surprise. The Respondent may object on the basis that breach of fiduciary duty had not been advanced at the Ministerial level as required by the *Act*. The Claimant acknowledged that the ground was not explicitly raised at the Ministerial level but takes the position that case law has recognized an underlying or implicit fiduciary duty in circumstances the Claimant asserts exist here. The parties wish to discuss the issue more closely themselves and to report the result at the next CMC, including the manner and timing for resolution if they cannot resolve it themselves.

[4] The Claimant confirmed that oral history will not be presented.

[5] The Claimant proposed that the hearing on validity be in the community and the Respondent is content with that proposal. The Claimant has not explored particular locations but will do so in consultation with the Registry. Progress in this respect will be reported at the next CMC.

[6] The parties still anticipate the hearing on validity will take place in June or July 2014.

[7] A further CMC will be held in January 2014, to be coordinated by the Registry with the parties.

W.L. WHALEN

Honourable W.L. Whalen
Specific Claims Tribunal Canada