

FILE NO.: SCT-3002-11
DATE: 20150128

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
BIG GRASSY)	
(MISHKOSIIMIINIIZIIBING) FIRST)	Donald Colborne, for the Claimant
NATION (INDIAN BAND))	
)	
)	
Claimant)	
)	
- and -)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	Jeff Echols, for the Respondent
OF CANADA)	
As represented by the Minister of Indian)	
Affairs and Northern Development)	
)	
)	
Respondent)	
)	
)	HEARD: January 26, 2015

ENDORSEMENT

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on January 26, 2015, at 9:30 A.M. Eastern Time (Ottawa).

[1] The Parties confirmed that production of archival documents was complete and that they were close to agreement on the contents of a Common Book of Documents. The Respondent has offered to compile the Common Book of Documents, including transcriptions of illegible documents.

[2] The Claimant proposes to enter 19 non-archival documents, 17 of which the Respondent indicated it opposed on the basis that they were not proper evidence, and were also not relevant or necessary. After discussion, it appeared that the Claimant proposed to enter these documents through its historical advisor, Mr. Holzkamm, as part of his testimony at the hearing. The Claimant indicated that it proposed calling Mr. Holzkamm to give testimony of a non-expert nature, as well as of an expert nature with opinion. The Claimant agreed that it would provide the Respondent with a report of Mr. Holzkamm's proposed testimony in relation to the identified non-archival documents and that the report would comply with Rule 88 of the *Specific Claims Tribunal Rules of Practice and Procedure* (the "Tribunal Rules"). The Claimant proposed that any disagreement about the witnesses' expert status and the admissibility of his testimony be resolved at the hearing. The Respondent did not agree with this approach and indicated it might wish to examine the witness or bring an application in respect of the admissibility of his proposed evidence and the admissibility of the non-archival documents. The Respondent will have to consider its position when it has received the witness' report, which the Claimant hopes to have completed by mid-March 2015. This issue will be canvassed at the next CMC.

[3] The Claimant reported that it had delivered a copy of an expert report to the Respondent in respect of the nature and quantity of materials used in the subject roadway. The Claimant hoped that the Parties could agree to the filing of the report or having the information reflected in an Agreed Statement of Facts. The Respondent did not agree with this approach and requested that the expert report comply with the requirements of Tribunal Rule 88. The Respondent may wish to engage a responding report and may want to examine the Claimant's expert on the report. This issue will be canvassed at the next CMC.

[4] The Claimant proposed filing an expert report on calculating present values for the historical losses. He suggested that that report could be used by the Tribunal at or after the hearing to arrive at a presently valued amount of compensation if due. The Respondent did not agree and requests that any expert report be submitted in the usual way in compliance with Rule 88 of the Tribunal Rules. The Respondent may engage a responding report and may wish to examine the Claimant's expert. The Respondent submitted that the Claim be bifurcated into validity and compensation hearings. Present value experts and reports would not be required unless there was a finding of validity and determination that a historical payment was due. The

Claimant submitted that bifurcation would lengthen and complicate the hearing process and suggested that it all be dealt with at one hearing so as to save time and money. The Parties agreed to explore whether they could agree on the amounts of materials used. The question of expert evidence on this issue and the necessity of bifurcation will be canvassed at the next CMC. An application may be necessary.

[5] The Respondent reported that it had made a request for particulars. The Claimant indicated that it had responded to the request through its historical advisor, Mr. Holzkamm, hopefully providing the information requested. The Claimant did not object to further questions being directed to Mr. Holzkamm through written interrogatories, but it objected to holding oral examinations on the basis of time and expense. The Claimant submitted that a request for particulars was not available to the Respondent under the Tribunal's Rules. The Respondent submitted that a request for particulars was available by analogy to the Federal Court's Rules where the Tribunal's Rules were silent. The Parties will continue to attempt to resolve this issue through cooperation. The question will be canvassed at the next CMC. An application may be necessary.

[6] The Claimant has provided "Will-Say" Statements of proposed oral history evidence from three elders. The Respondent proposed that the oral history testimony be received orally and under oath in the community at a convenient time in advance of the hearing so that it was on record. The Respondent submitted that this testimony went "to the heart" of the evidence in this Claim and that it needed to know the case it had to meet in order to prepare appropriately. The Claimant opposed this suggestion on the basis that it prolonged and complicated the hearing process as well as increasing costs. The Claimant suggested that the receipt of oral history evidence would be most efficient if received at the hearing. The Parties will attempt to resolve their differences. The question will be canvassed at the next CMC. An application may be necessary.

[7] The Claimant reported that it had not retained responding experts because it did not yet know fully what the Claim was about and could not therefore properly direct an expert.

[8] The Parties agreed that it was premature to commence preparation of an Agreed Statement of Facts, an Agreed Statement of Issues and a Common Book of Documents until the issues addressed above were resolved.

[9] The next CMC will be held by teleconference on **April 20, 2015**, at 11:00 A.M. Eastern Time (Ottawa).

W.L. WHALEN

Honourable W.L. Whalen