

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**SAULTEAUX FIRST NATION**

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	July 13, 2018	D E P O S E
David Burnside		
Ottawa, ON	66	

**Claimant**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Indian Affairs and Northern Development

**Respondent/Applicant**

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**RESPONDENT'S APPLICATION FOR BIFURCATION**  
**Pursuant to Rule 10 and Part 4 of the**  
***Specific Claims Tribunal Rules of Practice and Procedure***

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**INTRODUCTION**

This Application for Bifurcation is brought by the Respondent pursuant to Rule 10 and Part 4 of the *Specific Claims Tribunal Rules of Practice and Procedure* and with leave of the Tribunal as set out in the Direction of the Honourable Larry Whalen of March 2, 2017.

The Claimant opposes the Application for Bifurcation.

**RELIEF SOUGHT**

The Respondent seeks an Order to have the Claim heard in two separate stages:

- a) Validity Stage - dealing with issues of validity whereby the Tribunal will first hold a hearing and render its decision on the validity of the claim.

- b) Compensation Stage - if the claim is found to be valid a second hearing will take place pertaining to compensation, including the principles of compensation and any applicable compensation criteria.

## **GROUNDINGS FOR THE APPLICATION**

Rule 10 of the *Specific Claims Tribunal Rules of Practice and Procedure* provides for the hearing of the issues of validity and compensation to proceed in separate stages.

The Respondent denies the validity of the claim. A decision finding the claim not valid will put an end to the action altogether. If the claim is found to be valid in whole, or in part, it will significantly narrow the issues for the second hearing. The second stage will be limited to the issue of compensation.

A central issue in this claim is the historic value of the surrendered and exchanged land. A determination of the historic value is intertwined with validity of the claim. Until the historic value is known and validity determined, the case on compensation (current value) is speculative and an unnecessary and expensive use of resources. The current value of the land is a separate compensation issue that only arises in the event the claim is found to be valid.

The Respondent has not prepared its case on compensation. If the claim is not bifurcated, the Respondent will likely require a loss of use report in response to the report submitted by the Claimant. Such reports are costly and typically take one to two years to complete. It will be more just, timely and cost effective to determine the validity of the claim first, rather than wait for completion of a loss of use report. While the issue of validity is being determined, the Respondent can seek instructions and take steps to put in place an expert who would be able to complete a loss of use report, if required.

The Claimant will not suffer any prejudice. If the claim is not bifurcated a determination on validity will be delayed until after completion of the Respondent's loss of use report. There is no advantage to waiting to determine validity at the same time as compensation.

If the Tribunal determines the claim is valid, the likelihood of settlement is significantly increased.

Bifurcation will lead to a more just, timely and cost-effective resolution of the Claim.

**THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL**

The *Specific Claims Tribunal Act*, S.C. 2008, c. 22, generally,

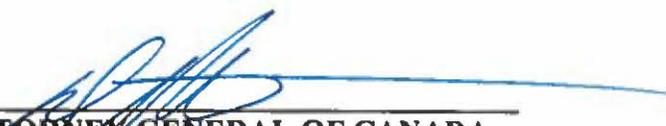
The *Specific Claims Tribunal Rules of Practice and Procedure* and Rule 10, in particular,

The Declaration of Claim and Response,

Canada's Memorandum of Fact and Law and Book of Authorities filed in support of the Application; and

Such other and further materials as may be appropriate.

Dated this 13<sup>th</sup> day of July, 2018.



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**ATTORNEY GENERAL OF CANADA**

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