

FILE NO.: SCT-3002-11
DATE: 20160708

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
BIG GRASSY)	
(MISHKOSIIMIINIIZIIBING) FIRST)	Donald R. Colborne, for the Claimant
NATION (INDIAN BAND))	
)	
)	
Claimant)	
)	
- and -)	
)	
)	Lisa Cholosky, for the Respondent
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	
Affairs and Northern Development)	
)	
)	
Respondent)	
)	
)	HEARD: July 4, 2016

ENDORSEMENT

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on July 4, 2016, at 12:00 P.M., Eastern Time (Ottawa).

[1] The Respondent reported that it was in the process of retaining the following responding experts to address the issues indicated:

- a) Professors Eric Kirzner and Lawrence Booth to provide a report that responds to Carl Beal's and provides present-day values;
- b) Hal Love, land appraiser, to provide a report that responds to the appraisal aspects of Tim Holzkamm's report;
- c) Dimitri Georgiou, engineer with EXP, to provide a report that responds to the engineering aspects of Mr. Holzkamm's report and the Lakeland Consulting Report;
- d) Brad Chaulk to provide a report that responds to the timber aspects of Mr. Holzkamm's report;
- e) Public History Inc. that does historical research, to provide a report that responds to the historical aspects of Mr. Holzkamm's report, and;
- f) Historian, Eric Angel, to provide a report that responds to parts of Mr. Holzkamm's report and the anticipated Elder Evidence regarding the effects of the road on the First Nation's livelihood, as well as any advantages the road may have brought to the First Nation community.

[2] Respondent's counsel indicated that approvals are being sought to retain these experts, whose work can begin when client approval has been obtained and retainer contracts have been executed. It is anticipated that these contracts will be in place over the next three months and that reports will then require approximately six months from the signing of each contract, not only because of complexity, but also because of the interdependence of a number of the reports. While the Claimant's counsel did not feel it possible to successfully oppose this time table, he strongly expressed his client's concern with the amount of time the proceeding is taking. Progress of the Respondent's experts will be reviewed at the next CMC.

[3] The Respondent reported that it presently intends to file an Application to bifurcate the Claim into two phases: 1) a validity phase that would also address historic value, and; 2) a Compensation phase, if validity is found. The Respondent is in the process of preparing the supporting materials for an Application, including the affidavit of Professor Kirzner explaining that he and his colleague must have a historic value before current value can be estimated. The Claimant intends to oppose the bifurcation Application. The Respondent's counsel indicated that she had recently received new evidence from the Claimant. The Respondent will hold off on

launching an Application until she has had the opportunity to assess this evidence and determine the impact of this information on its position and whether bifurcation is still necessary. The question of bifurcation and the timing of the filing of the Respondent's Application will be reconsidered at the next CMC.

[4] The Respondent indicated that it wanted a separate oral history evidence hearing in order that one of its historical experts would have the opportunity to respond to evidence of the elders. However, she will not decide whether an Application is necessary until the expert has been fully retained and she can discuss it with him.

[5] The Respondent indicated that it had redrafted a proposed Oral History Protocol without references to a separate oral history evidence hearing. While the Claimant's counsel finds the draft protocol acceptable, he must first review it with his client and be instructed. This issue will be reviewed at the next CMC.

[6] The next CMC will be held by teleconference on **October 24, 2016**, at 1:00 P.M., Eastern Time (Ottawa). Justice B. MacDougall will preside over the next CMC and will henceforth take management of the proceeding.

W.L. WHALEN

Honourable W.L. Whalen