

SPECIFIC CLAIMS TRIBUNAL

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F I L E D	March 14, 2018
David Burnside	
Ottawa, ON	82

B E T W E E N:

BROKENHEAD OJIBWAY FIRST NATION

Claimant

v.

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

Respondent

APPLICATION FOR BIRFURCATION
Pursuant to Rule 10 and Part 4 of the *Specific Claims Tribunal Rules of Practice and Procedure*

TO: Brokenhead Ojibway First Nation
As represented by
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INTRODUCTION

This Application for Bifurcation is brought 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 paragraph 4 of the Endorsement of the Honourable W.L. Whalen for the Case Management Conference of January 15, 2018.

The Claimant opposes the Application for Bifurcation.

RELIEF SOUGHT

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

- a) Validity Stage - dealing with issues of validity and historical loss respectively whereby the Tribunal will first hold a hearing and render its decision on the validity and will determine a base value of loss (if validity is found) 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, dealing with the carry forward of the base amount, 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.

Canada 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 compensation phase will be limited to the issue of present value of the historical loss.

If the Claim is found to be valid, the Tribunal will be required to determine the historical loss before making a determination on the present value of the historical loss. This amount will be based on either the Claimant's expert, Canada's expert or some other amount determined by the Tribunal. Until the Tribunal determines the amount of the historical loss, if any, the present value of the Claim is speculative.

Canada has not prepared its case on compensation. If a historical loss is found, Canada will need to retain an expert, submit evidence and argument regarding the bringing forward of 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: March 14, 2018


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