

FILE NO.: SCT-5004-11

DATE: 20130225

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)
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KAHKEWISTAHAW FIRST NATION)
) <u>Stephen M. Pillipow and Adam Touet</u> , for the
) Claimant
)
Claimant)
)
- and -)
)
)
HER MAJESTY THE QUEEN IN RIGHT OF)
CANADA)
As represented by the Minister of Indian Affairs)
and Northern Development)
) <u>Lauri Miller and Donna Harris</u> , for the
) Respondent
)
Respondent)
)
)
)
)
) HEARD: February 13, 2013

AMENDED ENDORSEMENT

Hon. J. Mainville, Member

GENERAL

[1] The parties have informed the Tribunal of the following:

- The *Agreed Statements of Facts* has been put on hold pending the completion of additional research by the Claimant.

- The *Common Book of Documents* cannot be completed until all research has been completed.
- A *Preliminary list of Documents* has been prepared by the Claimant and was provided to the Crown on February 1, 2013. The Crown shall provide its comments to the Claimant as soon as possible.
- The Crown is undertaking research to locate the Orders in Council, which should be completed in June 2013.

[2] The Tribunal expressed its concerns regarding the long delay to prepare the Claim to be heard on its merits. The parties informed the Tribunal that they do not think that the file will be ready before the end of 2013 or during spring 2014.

PRODUCTION OF DOCUMENTS

The Claimant's Application

[3] The Claimant has filed an Application for Leave and Application for Production of Documents and has confirmed having served it to the Crown on February 5, 2013. The Crown has consented to the Claimant's Application for Leave to bring an Application but does not consent to the Application for Production of the Subject Documents.

[4] The Claimant has requested access to the Subject Documents in order to prepare for the hearing on this matter. The Crown has refused to voluntarily produce the Subject Documents.

[5] In its Application, the Claimant asks for documents that were in the files at Library and Archives Canada but were removed under s. 23 of the *Access to Information Act* for the reasons that the information they contain is subject to solicitor-client privilege.

[6] The Application for Leave to bring an Application for Production of documents **is granted.**

- [7] The Crown shall provide its response to the Application by **March 1, 2013**.
- [8] The parties shall discuss whether they can agree about a process to allow the Claimant to get information regarding the Subject Documents in order to prepare the hearing on the Application. The parties shall notify the Tribunal by **March 6, 2013**, as to whether they have reached an agreement on this matter. In the affirmative, the parties shall file a copy of the agreement to the Tribunal. In the negative, the Tribunal shall render a decision. In such a case, if the parties wish to provide additional arguments before a decision is rendered they will have to file their additional arguments, within the same deadline, i.e. by **March 6, 2013**.
- [9] The Crown shall provide to the Tribunal a copy of the Subject Documents by **March 6th, 2013** for inspection in order to determine whether the claim of privilege is valid. The documents shall be kept confidential.
- [10] The parties shall also notify the Tribunal in writing by **March 6, 2013**, whether they want to have an oral hearing on the merits of the Application in Saskatoon or whether they agree that a decision be rendered by the Tribunal based on written submissions. In such a case, a videoconference or telephone conference shall be scheduled, if the Tribunal considers it appropriate to hear the parties on a particular point.
- [11] Whether it is an oral hearing or a decision based on written submissions, the Claimant shall serve its brief and authorities to the Crown and file a copy with the Tribunal two weeks from **March 6, 2013** or two weeks from the date the Tribunal has rendered its decision on the preliminary question, if any (whichever is later).
- [12] The Crown shall serve its brief and authorities to the Claimant and file a copy with the Tribunal within two weeks from the service of the Claimant's brief and authorities.
- [13] The date of the hearing on the Claimant's Application is scheduled tentatively on **April 17, 2013**.

The Crown's Application

- [14] It is the Crown's position that the material the Claimant is seeking to rely on, which includes reports from D.A. Lockhart and J. Holmes and other reports, is subject to settlement privilege.
- [15] The Crown shall serve to the Claimant and file with the Tribunal an Application for a decision on the privileged nature of the said documents by **March 1, 2013**.
- [16] The Claimant shall serve to the Crown and file with the Tribunal its response by **March 15, 2013**.
- [17] The Tribunal shall notify the parties whether a date shall be scheduled for a hearing on the merits of the Application, or whether the hearing shall be suspended until a decision is rendered in another case raising the same issue and which is currently pending before the Tribunal.

BIFURCATION

The Claimant's Request

- [18] The parties informed the Tribunal that they have not reached an agreement regarding dividing the issues of the Claim into separate hearings.
- [19] The Claimant requests that the issue regarding the sale proceeds be heard separately from the issue regarding the revenue/capital account management. The Crown's position is that these issues are interrelated and should be heard together in one hearing.
- [20] The Claimant shall serve to the Crown and file with the Tribunal a Brief regarding its position on this matter by **March 15, 2013**.

[21] The Crown shall serve to the Claimant and file with the Tribunal its response to the Claimant's Brief by **March 22, 2013**.

[22] The Tribunal shall render its decision based on the written submissions of the parties, unless it determines that it is necessary to hear the parties.

The Crown's Request

[23] The Crown believes that it is appropriate to bifurcate the proceedings and have the issue of validity heard and ruled upon prior to a hearing on the issue of compensation.

[24] The Claimant opposes this request arguing that it has received the funding to prepare its case on the compensation issue and that the expert's work is well under way.

[25] The discussion on the bifurcation of the claim is suspended and shall resume after the Tribunal has rendered its decision on the Claimant's request regarding the division of the issues of the Claim into separate hearings.

JOHANNE MAINVILLE

Justice Johanne Mainville
Specific Claims Tribunal of Canada