

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES
February 21, 2013	
Guillaume Phaneuf	
Ottawa, ON	20
D É P O S É	

KAHKEWISTAHAW FIRST NATION

Claimant

v.

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

Respondent

RESPONSE TO CLAIMANT'S APPLICATION FOR PRODUCTION
Pursuant to Rules 35 & 59 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: Kahkewistahaw First Nation
as represented by Stephen M. Pillipow,
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The Respondent provides the following Response to the Claimant's Application for Production:

1. The Respondent claims that the subject documents are legal opinions from the Department of Justice and are protected by solicitor-client privilege and immune from production to the Claimant.
2. Solicitor-client privilege applies because the opinions were made in the context of a Department of Justice employee working in a professional capacity as lawyer for the purpose of giving legal advice to client departments upon request for advice from those departments. The Department of Justice employees and the clients intended the opinions to be confidential.
3. The subject documents were withheld from the Claimant's researcher by Library and Archives Canada pursuant to s. 23 of the *Access to Information Act* which allows a government institution to refuse disclosure of any requested record that contains information subject to solicitor-client privilege.
4. It is established law that solicitor-client privilege must be as close to absolute as possible and will only yield in certain clearly defined circumstances.
5. There are no recognized exceptions to solicitor-client privilege with respect to the subject documents which would allow an order for production of the subject documents.
6. The Respondent relies on Rule 59 of the *Specific Claims Tribunal Rules of Practice and Procedure*.
7. There is no provision in the Rules for disclosure of the documents under certain conditions in a claim of privilege. Rule 59 does allow the Tribunal to inspect documents with respect to which a claim of privilege is asserted to determine whether the claim of privilege is valid.


8. Relevance of information that may or may not be contained within the subject documents is not a criterion the Tribunal may consider in determining whether the claim of privilege is valid.
9. A copy of the subject documents will be filed with the Tribunal on or before March 6, 2013, in accordance with the Endorsement of the February 13, 2013 Case Management Conference.

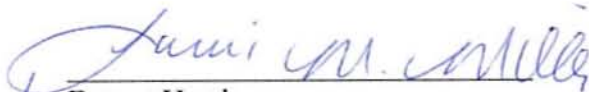
The Respondent respectfully requests the following relief:

- a) That the Tribunal inspect the subject documents to determine whether the claim of solicitor-privilege is valid pursuant to s. 59 of the *Specific Claims Tribunal Rules of Practice and Procedure*;
- b) That the Tribunal declare that the Respondent's claim of solicitor-privilege over the subject documents is valid; and,
- c) That the Claimant's Application for Production of the subject documents be dismissed.

Dated this 21st day of February, 2013.

Solicitor for the Respondent


Lauri M. Miller


for Donna Harris

William F. Pentney
Deputy Attorney General of Canada
Per: Lauri Miller and Donna Harris
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