

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

SISKA INDIAN BAND

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	May 3, 2016	D É P O S É
Amy Clark		
Ottawa, ON	46	

Claimant

v.

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

Respondent

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**RESPONSE TO APPLICATION FOR LEAVE AND NOTICE OF APPLICATION TO HAVE  
EXPERT WITNESS TESTIMONY HEARINGS ADJOURNED**  
Pursuant to Rules 11, 21, 29, 30, 31, 32, 33 and 34 of the *Specific Claims Tribunal Rules  
of Practice and Procedure*, Section 18 of the *Specific Claims Tribunal Act* and Practice  
Direction #7

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BY: SISKA INDIAN BAND  
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TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
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## **RESPONSE OF SISKI INDIAN BAND (“SISKA”) TO RELIEF SOUGHT**

1. Siska consents to an order for leave of the Tribunal for Her Majesty the Queen in Right of Canada (“Canada”) to bring an application pursuant to Rule 30 of the *Specific Claims Tribunal Rules of Practice and Procedure* (the “Rules”); and
2. Siska opposes the application for an order pursuant to Rule 11 of the Rules that the hearings of expert witness testimony scheduled to commence May 31, 2016 be adjourned to a date to be fixed.

## **FOUNDATIONS**

### Factual Basis

1. Siska filed its Declaration of Claim on May 1, 2014.
2. Canada filed its Response to Siska’s Declaration of Claim on July 30, 2014.
3. On March 9, 2016, the Tribunal issued an Endorsement that oral history evidence hearings will be held in the communities of Skuppah and Siska the week of May 16, 2016 with expert evidence hearings to be held in Vancouver beginning May 30, 2016.
4. On April 19, 2016, the Tribunal issued a Notice of Hearing confirming that the oral history evidence hearings will commence at the Siska Community Hall on May 18<sup>th</sup> for two and a half days. The hearing of expert witness testimony will be held at the Federal Court of Canada, in Vancouver commencing on May 31, 2016 for a period of seven days.
5. The parties still need to fix dates for the exchange of Memoranda of Fact and Law and final arguments.
6. On April 28, 2016, Canada and Skuppah Indian Band (“Skuppah”) filed a joint application in the Skuppah claim for leave to apply to adjourn the hearing of expert witness evidence and for an order adjourning the hearing of expert evidence presently scheduled to commence on May 31, 2016.
7. On April 29, 2016, Canada filed an application for leave and a notice of application to adjourn the hearing of expert evidence presently scheduled to commence on May 31, 2016. Siska was not served with these applications.
8. Canada has not committed to having any settlement discussions with Siska at this time.

### Legal Basis

9. Rule 21 deals with service of documents and requires that a document must be served personally or by email, fax or registered mail.

10. Sections 34 through 37 of the Rules address written applications. Rule 36 requires that a party who files a notice of application or a response must serve every other party with a copy of that document within 14 days after the day on which it is filed. Siska was not served with a copy of the notice of application pursuant to the Rules.
11. Rule 35 sets out that a party has 10 days after the day on which a party is served with a notice of application to file a response that sets out their position regarding the relief sought by the other party. If Canada's application had been served on Siska on April 29, 2015, Siska would have until May 9<sup>th</sup> to respond.
12. Canada argues that an adjournment of the expert testimony to a fixed date is a practical solution to avoid the risk of the same experts being re-called before the Tribunal. We respectfully submit this argument is speculative as Canada can not be sure that they will achieve settlement with Skuppah and it is clear that the adjournment is being sought to allow for "exploration of settlement".
13. While Siska takes no position respecting Canada's and Skuppah's joint application to adjourn the expert testimony in the Skuppah claim, Siska submits that it shouldn't be prejudiced and locked to a process where Canada has chosen to explore settlement options in the Skuppah claim but not in the Siska claim. The Siska claim has been delayed previously and Siska has incurred significant costs to ensure it is prepared to proceed with the expert testimony on May 31<sup>st</sup> and is ready to do so.
14. Canada argues that its application is intended to facilitate judicial economy. Siska submits that while the experts may have to do some additional travel if it is necessary to re-call them, this will be far more cost effective than having to prepare a second time for the expert testimony. Additionally, both the Tribunal and Siska have invested into securing resources for this part of the hearing, which will be lost if the expert testimony is adjourned.
15. At paragraph 13, Canada argues that Siska's intention to amend its Declaration of Claim is a further reason for the Tribunal to order an adjournment. Siska submits that it does intend to bring an application to amend its Declaration of Claim. However, this should not affect the hearing timeline as no dates have been set for the exchange of Memoranda of Fact and Law or for final argument. In addition, the proposed amendments to the Declaration of claim to be proposed by Siska are consistent with the Declaration of Claim of Skuppah, including the Amended Declaration of Claim of Skuppah, provided to the Tribunal on April 27, 2016.

## **MATERIAL IN SUPPORT**

16. Siska relies on the following material:
  - a. the pleadings filed in this matter to date;

- b. the *Specific Claims Tribunal Act*, S.C. 2008, c. 22;
- c. the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2001-119;  
and
- d. such further and other material as counsel may advise and the Tribunal may permit.

Dated this 2<sup>nd</sup> day of May 2016.



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Signature of Solicitor

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