

Honourable Harry Slade, Chairperson

A Case Management Conference (CMC) was held by teleconference on July 30, 2015, at 11:00 A.M., Eastern Time (Ottawa).

[1] The matter at hand has to do with the question around the adequacy of compensation in the light of the Claimants' assertions in the Declarations of Claim that the compensation paid was inadequate. That is an issue going to validity.

[2] The Claimants wish to put forward evidence of methodology that would apply to the work of the appraisers. Mr. Cook, the appraiser retained by the Claimants has, I understand, spoken of methodology in his expert report, but has not offered an opinion on the value that would be attributed to the land taken for railway purposes.

[3] The Respondent may rely on a report from an appraiser, Mr. Peebles, which sets out his opinion on the market value of the lands in question at the time of taking and his methodology applied in reaching his opinion.

[4] If the Respondent chooses to go beyond methodology and include an opinion on market value in the Peebles report, it may do so.

[5] If the Claimants or either of them elect to file a further report that is responsive to that filed by the Respondent, it will be up to the Claimants whether or not to have their appraiser set out his own opinion on the value of the land at the time of taking.

[6] If the Claimants, or either of them, file a report that contains an opinion on the market value of the time of taking, the Respondent may file a further report in response.

[7] Mr. Elsner advised that the Respondent will raise the following legal issue:

“It is something that we should have put in one of our two previous CMC briefs. But with respect to the fundamental submission of the claimants that market value isn't the only relevant factor, we submit that the *Specific Claims Tribunal Act* is very clear on how compensation should be assessed by the Tribunal, indeed how compensation must be assessed.

In a case where the taking is valid but the claimant establishes that the lands were taken under legal authority, but the claimant establishes that inadequate compensation was paid, section 20(1)(e) of the *Act* states that the Tribunal shall award compensation equal to the market value of a claimant's reserve land at the time they were taken, brought forward to the current value of the lot.

So we acknowledge that the claimants may wish to establish that this is not the end of the story. We agree that that is an issue that the Tribunal is going to have to determine. But it cannot be reasonably debated or denied that market value is a crucial -- it may be determinative of this whole thing. The claimants have known about section 20(1)(e), and in our opinion, should have put forward evidence through the report of Mr. Cook about what that market value is.

The Crown's current intention is to fully litigate this issue in the validity stage, so we want the claimants to be perfectly clear about that, that we are not agreeing that any aspect of market value can't be determined in the validity stage. We are going to offer up a report from Mr. Peebles on what that market value was, including any injurious affection. We are going to ask the Tribunal to rule on it.”

[8] Then followed this discussion:

“JUSTICE SLADE: All right. Just bear with me a moment.

Now, are we all of the understanding that we are now scheduled for evidentiary hearings only to receive the testimony of oral history, witnesses which -- and the expert evidence going to valuation, whether or not it includes opinions on market value, and that at a later date, we will be hearing submissions on what the parties contend ought to be found as fact and how the law applies to those facts as found. That is the program here. Is it not, Mr. Elsner?

MR. ELSNER: Yes, that is correct, Judge Slade.

JUSTICE SLADE: Then counsel for the claimants would agree with that presumably?

MR. HANNA: Yes, Your Honour.

MS. PENCE: Yes.”

[9] In order to avoid future debate over case-splitting, I make the following procedural order;

- a) If Mr. Peebles' report contains an opinion on value, the Claimants may file supplementary reports setting out their appraisal expert's conclusions on value.
- b) In that event, the Respondent will have liberty to provide a further report within the proper bounds of a responsive report.
- c) If the evidence in the scheduled phase of this proceeding is insufficient to permit a fair determination of the issue over the alleged inadequacy of compensation, the hearing may, after the scheduled evidence is heard, be adjourned to a date on which further evidence may be introduced. Counsel may make submissions on the matter, including on costs in the event that the Claimants do not introduce an opinion on the market value of the land at the time of the takings.

[10] If the Claimants choose to file an appraisal report with an opinion on market value, it must be served by **October 5, 2015**. Any responsive report from the Respondent has to be served not later than Monday, **October 12, 2015**.

[11] The Respondent is relying on section 20 which on the face of it deals with compensation as an issue going to the validity of the claim to the extent that it is based on inadequate compensation at the time of taking.

[12] It thus falls to the Respondent to make its argument on the application of section 20 to a determination of whether the compensation was adequate at the time of taking. The Respondent will bear the initial onus of argument of that proposition. Claimant's counsel will be able to respond to that in their Memoranda of Fact and Law.

[13] The Respondent also intends, per Mr. Elsner, to take issue with part of the Claimant's appraiser's report:

“...the only other issue that we hope to accomplish was to get a sense of next steps on our intent to challenge the admissibility of Mr. Cook's opinion on excessive width, which we say is outside his expertise.”

[14] The Respondent is to serve its written brief on this issue by **September 28, 2015**. The Claimants will serve their written responses by **October 8, 2015**.

[15] As there is a potential for further preparation by the Parties in the event that an adjournment and continuation of the evidentiary phase becomes necessary, the Tribunal recognizes that the Parties may incur unanticipated expenses. The Claimants may refer this endorsement to the Department of the Ministry which provides funding.

[16] Parties shall contact the Tribunal if they require a further CMC, on or before **August 7, 2015**. The CMC would then be scheduled for the following week.

HARRY SLADE

Honourable Harry Slade, Chairperson