

**FILE NO.:** SCT-3002-11  
**DATE:** 20161215

**SPECIFIC CLAIMS TRIBUNAL  
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

<b>BETWEEN:</b>	)	
	)	
BIG GRASSY	)	
(MISHKOSIIMIINIIZIIBING) FIRST	)	Donald Colborne, for the Claimant
NATION (INDIAN BAND)	)	
	)	
	)	
Claimant	)	
	)	
<b>- and -</b>	)	
	)	
	)	Lisa Cholosky, for the Respondent
HER MAJESTY THE QUEEN IN RIGHT	)	
OF CANADA	)	
As represented by the Minister of Indian	)	
Affairs and Northern Development	)	
	)	
	)	
Respondent	)	
	)	
	)	

**ORDER**

**Honourable Barry MacDougall**

**UPON CONSIDERING** the Claimant’s Application filed on December 2, 2016, pursuant to Rules 34, 60(1) and 61 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, the affidavit of Glenn Archie dated November 29, 2016, and upon the consent of the Parties;

**THE TRIBUNAL ORDERS THAT:**

[1] The Claimant is permitted to examine Elders Robert Archie and Bessie Tom, before the hearing, for the purpose of taking their evidence for use at the hearing.

[2] The Respondent is entitled to cross-examine and the Claimant to re-examine if Counsel so advise.

[3] The evidence is to be taken under oath in the presence of a qualified court reporter, and a written transcript, sworn as to accuracy, is to be produced by the reporter.

[4] The evidence is to be taken pursuant to the protocol signed by Counsel for the Parties and dated November 29, 2016 (enclosed).

BARRY MACDOUGALL

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Honourable Barry MacDougall

**PROTOCOL FOR ELDER TESTIMONY AND ORAL HISTORY**  
**SCT-3002-11**

**Big Grassy First Nation (Indian Band) v. Her Majesty the Queen in Right of Canada**

**Background:**

- The Canadian legal system relies on the parties to present useful, reliable and fair evidence, in order to allow an impartial judge to decide the facts and the law.
- The Specific Claims Tribunal was established by the *Specific Claims Tribunal Act*, SC 2008, c. 22, recognizing that it is in the interests of all Canadians that the specific claims of First Nations be addressed, and resolving specific claims will promote reconciliation between First Nations and the Crown.
- It is also recognized by the parties that elder testimony can contribute to an understanding of history and an understanding from a First Nations' perspective.
- It is also recognized by the parties that the historical record for this specific claim consists mainly of the documentary record and may not include the First Nation's perspective which is usually recounted orally.
- Reconciliation requires courts and tribunals to find ways of making rules of procedure relevant to the First Nation's perspective, to achieve the principles of fairness, truth-seeking and justice.

**Principles:**

- Elders who testify will be treated with respect and dignity by all parties, including during any cross-examination.
- Elder testimony and oral history evidence will be approached with sensitivity to the norms and practices of the First Nation and the needs of the Elder testifying.

**Disclosure and Preliminaries to Oral History Evidence Hearing:**

- The Claimant will provide the Respondent with a list of Elders it intends to call to give oral history evidence.
- The Claimant will provide the Respondent with will say statements of the anticipated areas of evidence for each witness, including an explanation of the source of the Elder's testimony.
- The Claimant will provide information about the First Nation's practices or protocols for requesting Elder testimony and any need for a community member to introduce the Elder and confirm his or her status as an Elder.

**Oral History Evidence Hearing:**

- The hearing should be held in the First Nation's community if possible.
- The parties agree to minimize disruptions of the flow of a witness' testimony.

This is exhibit "A" referred to in  
the Affidavit of Glenn Archie  
Sworn before me at Fort Frances, ON  
this 29<sup>th</sup> day of November, D. 2016  
[Signature]

**Admissibility and Weight:**

- The admission of an Elder's testimony is a matter for the Tribunal to decide. It may be appropriate to obtain a ruling on the admissibility of the evidence prior to the main evidence being heard.
- Based on the will say statement(s), if the Respondent intends to raise a preliminary objection to the admissibility of the evidence, the Respondent will inform the Claimant of this a reasonable time before the hearings.
- The parties agree to a flexible application of the rules of evidence in a manner commensurate with the inherent difficulties posed by First Nation claims, subject to the Tribunal's direction.

**CONSENTED TO BY**

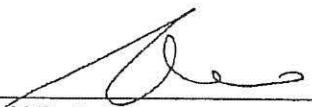
ATTORNEY GENERAL OF CANADA

Department of Justice Canada  
Prairie Regional Office  
301 – 310 Broadway  
Winnipeg, Manitoba  
R3C 0S6  
Fax: (204) 984-5910

Per: Lisa Cholosky  
Lisa Cholosky  
Tel: (204) 984-5218  
Email: [lisa.cholosky@justice.gc.ca](mailto:lisa.cholosky@justice.gc.ca)

Solicitor for the Respondent

This 29<sup>th</sup> day of November, 2016.

  
Donald R. Colborne  
Solicitor for the Claimant

1125 Fort Street  
Victoria, B.C. V8V 3K9  
Tel: (807) 344-6628  
Fax: (807) 983-3079  
Email: [drcolborne@shaw.ca](mailto:drcolborne@shaw.ca)

This 27<sup>th</sup> day of November, 2016 <sup>b</sup>