

FILE NO.: SCT-4001-12 and SCT-4001-13
DATE: 20140219

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:)
)
WAYWAYSEECAPPO FIRST NATION)
)
Claimant) Earl C. Stevenson and Norman Boudreau,
) for the Claimant
)
- and -)
)
HER MAJESTY THE QUEEN IN RIGHT) Jeff Echols, for the Respondent
OF CANADA)
As represented by the Minister of Indian)
Affairs and Northern Development)
)
Respondent)
)
) **HEARD:** February 17, 2014

BETWEEN:)
)
GAMBLERS FIRST NATION) Stephen Pillipow, for the Claimant
)
Claimant)
)
- and -)
)
HER MAJESTY THE QUEEN IN RIGHT)
OF CANADA)
As represented by the Minister of Indian)
Affairs and Northern Development) Jeff Echols, for the Respondent
)
Respondent)
)
)
) **HEARD:** February 17, 2014

ENDORSEMENT

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on February 17, 2014 at 2:05 P.M., Eastern Time (Ottawa).

[1] The Parties have produced documents as required except if road allowances on Gamblers First Nation's lands become an issue. Gamblers First Nation claims that lands for road allowances were included in the grant given to them by Canada, but were improperly transferred to the province without compensation to the First Nation. The Respondent takes the position that road allowances, which may involve about 651 acres, were not included in the original grant. The Parties shall actively discuss whether this complicated issue will be part of the claim and how it will be handled in either case. The Respondent requires time to work through the issue with the other Parties and then to obtain instructions. Counsel for Waywayseecappo First Nation have briefed their client by telephone, but because of the question's complexity, they must meet face to face to advise and then obtain instructions. Counsel agree that several months will be required to resolve their respective positions on this question. If the road allowance issue becomes part of the claim, there will likely be further documentary production.

[2] Gamblers First Nation's expert, Joan Holmes & Associates, is compiling a Common Book of Documents which it anticipates will be presented to the Parties for review and agreement by April, 2014. The Parties shall decide which of the compiled documents will form the Common Book of Documents. Completion will also depend on the status of the road allowance question.

[3] Counsel for Gamblers First Nation have drafted an Agreed Statement of Issues, which the other Parties are now reviewing. The road allowance question will bear on the completion of an Agreed Statement of Issues.

[4] Counsel for Waywayseecappo First Nation have drafted an Agreed Statement of Facts, which the other Parties are now reviewing. The road allowance issue will bear on the completion of an Agreed Statement of Facts.

[5] It was agreed that the same Common Book of Documents, Agreed Statement of Issues and Agreed Statement of Facts shall be filed for both claims.

[6] Gamblers First Nation has served copies of two expert reports on the other Parties, namely: Report on the 1892 and 1898 Surrenders of Land in Gamblers Indian Reserve No. 63 (by Tara Smock), and; Areas of Lizard Point Indian Reserve No. 62 and the Gambler Indian Reserve No. 63 (by Daniel Babiuk). Waywayseecappo First Nation Proposes to rely on a population study report of Ms. Lockhart pertaining to the 1880/1881 timeframe for the Waywayseecappo First Nation. The report has been served on the Respondent and shall be served within one week on Gamblers First Nation. The authors of the reports will be presented to testify at the hearing if the reports are relied upon. The Respondent requires time to review the reports to consider whether it will require one or more experts in response.

[7] Both First Nation Claimants propose to call oral history evidence. Gamblers First Nation has put forward a proposal for the development and presentation of oral history and the other Parties are in the process of reviewing it.

[8] The Parties agree that the validity and compensation phases of the Waywayseecappo First Nation claim should be bifurcated. The Respondent reminded that, from its perspective, the validity stage of the process consisted of two phases (the usual general validity question and an alternative position involving set-off). Bifurcation of the Gamblers First Nation claim is more complicated because of the possible road allowance question. The Respondent and Counsel for Waywayseecappo First Nation require time to complete their review of this issue and to obtain instructions.

[9] Without making admission or expressing a binding opinion, the Parties recognized that these claims could affect the interests of the Rolling River First Nation and the

Tootinaowaziibeeng Treaty Reserve (Valley River) First Nation. Accordingly, Notices pursuant to section 22 shall be sent to Tootinaowaziibeeng Treaty Reserve (Valley River) First Nation and Rolling River First Nation.

[10] Counsel for the First Nations reported that each community had facilities that could accommodate the hearing and that both communities wished to have the hearing in their community. They are in discussions about a way to share the process, but if the respective communities are uncomfortable in attending at the other community for some part of the hearing process, then neutral ground could be found at the Russell Inn in Russell, Manitoba where Counsel and Tribunal personnel would likely be accommodated. The question will be reviewed at the next CMC.

[11] At this point no applications or special cultural diversity issues are anticipated.

[12] The issues reported and discussed in this Endorsement will be reviewed with a view to progress and establishing timetables at a CMC to be held by teleconference on Wednesday, April 30, 2014, at 3:00 p.m. Eastern Time (Ottawa).

W.L. WHALEN

Honourable W.L. Whalen
Specific Claims Tribunal Canada