

FILE NO.: SCT-7003-13
DATE: 20170523

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)
)
AKISQ’NUK FIRST NATION)
) Darwin Hanna, for the Claimant
)
Claimant)
)
- and -)
)
HER MAJESTY THE QUEEN IN RIGHT)
OF CANADA)
As represented by the Minister of Indian) Whitney Watson and Darren Pickup, for the
Affairs and Northern Development) Respondent
)
)
Respondent)
)
)
)
) **HEARD:** April 10, 2017

ENDORSEMENT AND ORDER

Honourable William Grist

A Case Management Conference (CMC) was held by teleconference on April 10, 2017, at 1:00 P.M., Eastern Time (Ottawa).

Oral History Evidence Hearing

[1] The Tribunal ratified the Parties' proposed Oral History Protocol and Site Visit Protocol as filed with the Tribunal on April 3, 2017. The Parties shall file executed copies with the Tribunal for the record.

[2] The Claimant shall be in contact with the Registry in due course to deal with logistical matters for the upcoming oral history evidence hearing to be held in the Claimant's community, possibly in their Band Hall.

[3] Pursuant to paragraph 13(1)(b) and section 18 of the *Specific Claims Tribunal Act*, SC 2008, c 22, Rules 3, 83 and 84 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, and on consent of the Parties, **THE TRIBUNAL ORDERS THAT:**

- a. The oral history evidence hearing ("hearing"), as part of the validity stage of this Claim's bifurcated hearing, shall take place on **October 3-6, 2017** in the Claimant's community. A site visit shall also take place during this time in accordance with the Parties' Site Visit Protocol;
- b. The Claimant shall serve its Will-Say Statements on the Respondent on or before **June 23, 2017**;
- c. The Respondent shall, at least one month before the hearing start date, being on or before **September 5, 2017**, inform the Claimant in writing of any preliminary objections it intends to raise with respect to the admissibility of any of the areas of evidence as set out in the Will-Say Statements (as agreed to in substance in paragraph 4(b) of the Parties' Oral History Protocol ("Protocol")); and
- d. The Parties shall, at least one month before the hearing start date, being on or before **September 5, 2017**, produce any document not yet produced but which they intend to rely on during examinations at the hearing (as agreed to in substance in paragraph 4(a) of the Parties' Protocol).

Discussion/Background

[4] At the Claimant's initiating request, the Parties agreed to proceed to an oral history evidence hearing as soon as possible, given concern of the age and/or infirmity of the lay and/or Elder witnesses and the need to preserve their evidence.

[5] In their Joint Status Report dated December 11, 2014, the Parties had initially reported that they agreed that this Claim would remain in abeyance pending judicial review of *Williams Lake Indian Band v Her Majesty the Queen in Right of Canada*, 2014 SCTC 3 (SCT-7004-11) ["*Williams Lake*"], currently before the Supreme Court of Canada.

[6] Two other Tribunal decisions in the Claimant's claim SCT-7006-12 (once joined to be heard together with this Claim but separated by Order dated August 6, 2014), *Akisk'nuq First Nation v Her Majesty the Queen in Right of Canada*, 2016 SCTC 3 and *Akisk'nuq First Nation v Her Majesty the Queen in Right of Canada*, 2016 SCTC 2 ["*Aqisk'nuq* decisions"], are currently under judicial review before the Federal Court of Appeal.

Document Production

[7] The Parties shall file, either jointly or separately, a preliminary document list for the Common Book of Documents with the Tribunal on or before **November 15, 2017**.

Discussion/Background

[8] The Claimant submitted that the Parties continue efforts on producing a preliminary Joint Common Book of Documents based on existing Claim pleadings, even though final decisions in *Williams Lake* and *Akisk'nuq* decisions (together, the "decisions") may have some impact on the legal analysis of the Claim. The Claimant believes that irrespective of the final holdings of these decisions, it is likely that this Claim will need to proceed to a hearing on the merits.

[9] The Respondent submitted that significant additional document research may be required for this Claim, depending on the holdings of these decisions. The Respondent would prefer to wait until any potential amendments of the Claims' pleadings are made according to these decisions. It believes that in particular, based on the *Akisk'nuq* decisions of the Tribunal, there may be a significant gap in the British Columbia reserve creation history on the current Claim's

documentary record. The Respondent also noted that Claim research has been completed in any event based on the current Pleadings, as a result of research having been conducted by the Parties in the review of the Claim before the Specific Claims Branch.

[10] Considering the Tribunal's concern regarding ongoing delay of Claim progress towards a resolution, as well as the potential need for further Claim research pending these decisions, the Tribunal requested that the Parties produce a preliminary list of Common Book of Documents to get started, subject to any further historical research which might occur following the decisions.

WILLIAM GRIST

Honourable William Grist