

SPECIFIC CLAIMS TRIBUNAL

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	May 8, 2017	
	Guillaume Phaneuf	
Ottawa, ON		14

BETWEEN:

KEESEEKOOSE FIRST NATION

Claimant

v.

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

Respondent

RESPONSE TO APPLICATION FOR BIFURCATION
Pursuant to Rule 35 of the *Specific Claims Tribunal Rules of Practice and Procedure*

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INTRODUCTION

1. This Response to the Application for Bifurcation of the Respondent (“the Crown”) is filed pursuant to Rule 35 of the *Specific Claims Tribunal Rules of Practice and Procedure* (the “Rules”) as set out in paragraph [2] of the Endorsement of the Honourable Barry MacDougall of April 11, 2017.
2. The Claimant (“KFN”) opposes the Application for Bifurcation.

RELIEF SOUGHT

3. KFN requests that this Honourable Tribunal reject the Crown’s Application to bifurcate this Claim and allow the Claim to proceed in a single stage.

GROUNDS FOR THE RESPONSE

4. Bifurcation is discretionary and is an exceptional remedy that should be narrowly circumscribed, particularly so where bifurcation is opposed. The burden is on the Crown demonstrate in its Application for Bifurcation that, on the balance of probabilities, bifurcation will result in the just, expeditious, and least expensive determination of the Claim on its merits.
5. KFN submits that the Crown has failed to meet its burden to establish that bifurcation will result in the more just, expeditious and cost-effective resolution of the Claim. KFN’s position is based on the following key considerations:
 - a) Issues regarding validity/liability in this Claim are complex, while the determination of compensation is comparatively straightforward in consideration of recent Tribunal jurisprudence and the robust institutional capacity of the parties with respect to compensation for the illegal taking of reserve lands during the relevant historical period.
 - b) Issues relating to validity/liability and compensation in this Claim are interwoven, as valuation of the historical loss is relevant to both. As such, bifurcation would result in duplicative proceedings.
 - c) It is unlikely the determination of issues relating to validity will put to an end the Claim, or significantly increase the likelihood of settlement.
 - d) The Crown’s indication that it intends to exhaust all rights of appeal before proceeding to the compensation stage of the Claim in the event of bifurcation suggests that bifurcation will result in significant delay and higher costs to the parties.
 - e) KFN has already devoted resources into developing arguments related to compensation and has already spent considerable funds to prepare its case regarding compensation.

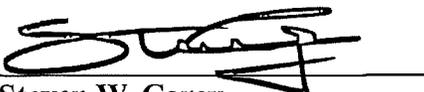
- f) Bifurcating this Claim provides an unfair advantage to the Crown, due to the disparity of resources between the parties, the long-outstanding nature of the claim, and the Crown's litigation strategy of exhausting all rights for appeal after the first stage of this Claim in the event it is unsuccessful.
6. In light of the above, bifurcation will not lead to a more just, timely, and cost-effective resolution of the Claim, and KFN submits that the Crown has failed to meet its burden to establish otherwise.
7. As such, KFN respectfully requests that the Crown's Application be dismissed.

THE RESPONSE WILL BE SUPPORTED BY THE FOLLOWING MATERIAL

- KFN's Memorandum of Fact and Law and Book of Authorities filed in support of the Response to the Application for Bifurcation.

Dated this 8th day of May, 2017.

MAURICE LAW

Per: 
Steven W. Carey

Per: 
Amy Barrington

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