

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES
February 16, 2015	
Nicholas Young	
Ottawa, ON	24

SCT File No.: SCT-4001-12 & SCT-4001-13

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

WAYWAYSEECAPPO FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As Represented by the Minister of Indian Affairs and Northern Development Canada

Respondent

AND

BETWEEN:

GAMBLERS FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As Represented by the Minister of Indian Affairs and Northern Development Canada

Respondent

**APPLICATION FOR LEAVE AND NOTICE OF APPLICATION PURSUANT TO PART
4 OF THE *SPECIFIC CLAIMS TRIBUNAL RULES OF PRACTICE AND PROCEDURE***

To: **Waywayseecappo First Nation**
As represented by J.R. Norman Boudreau / Earl C. Stevenson
Boudreau Law
Barristers & Solicitors
3 St. Anne's Road
Winnipeg, MB R2M 2X9

To: **Gamblers First Nation**
As represented by Stephen M. Pillipow / Adam Touet
The W Law Group
Barristers and Solicitors
300 – 110 – 21st Street East
Saskatoon, SK S7K 0B6

TAKE NOTICE THAT the Respondent (“Canada”) will make an application before the Specific Claims Tribunal (“Tribunal”) at 10:00 a.m. on April 27, 2015 at the Russell Inn, in Russell Manitoba.

THE APPLICATION IS FOR:

1. Pursuant to Rules 30 and 34 of the *Specific Claims Tribunal Rules of Practice and Procedure*, and *Practice Direction #7*, leave is sought by Canada to make an Application, under Rule 29, for the resolution of an evidentiary issue.
2. Pursuant to Rule 29 of the *Specific Claims Tribunal Rules of Practice and Procedure*, Canada seeks an Order that:
 - a. the analysis and testimony of Dorothy A. Lockhart, as proposed by the Claimant Waywayseecappo First Nation (the “Lockhart Analysis”), and in particular the report dated April 30, 2014 and titled “1880 and 1881 Waywayseecappo Band Population Study” (the “Lockhart Report”), is inadmissible as evidence in the Claims; and
 - b. the analysis and testimony of Tara J. Smock of Joan Holmes & Associates Inc., as proposed by the Claimant Gamblers First Nation (the “Joan Holmes Analysis”), and in particular the Report dated May 2010 and titled “Report on the 1892 and 1898 Surrenders of Land in Gambler Indian Reserve No. 63” (the “Joan Holmes Report”), is inadmissible as evidence in the Claims.
3. Canada seeks such further and other orders as may be just.

THE GROUNDS FOR THE APPLICATION ARE:

1. Considering the issues in dispute at this stage of the Waywayseecappo First Nation ("WFN") and Gamblers First Nation ("GFN") Claims, neither the Lockhart Analysis nor the Joan Holmes Analysis will facilitate the just, timely or cost-effective resolution of the Claims.

2. The established legal test for the admission of evidence, as appropriate expert evidence in the Tribunal context, includes requirements that the evidence must be of relevance to the issues in dispute, and of necessity in assisting the trier of fact.

3. Though it is relevant to the issue of the WFN allegation that the 1881 surrender of lands from Indian Reserve 62 was illegal on grounds that a quorum of eligible voters was not met at the surrender meeting, the Lockhart Analysis is not relevant to any other issue in the WFN or GFN Claims, and it is not of necessity for the Tribunal's determination of the WFN or GFN Claims because Canada has advised the Claimants and the Tribunal that it is prepared to state the following in an agreed statement of facts:

The available evidence does not demonstrate that the 1881 surrender of Indian Reserve 62 complied with all of the requirements of sub-section 37(1) of the *Indian Act*, S.C. 1880; specifically the attendance at the surrender meeting by a majority of the male members of the band of the full age of twenty-one years, and a vote held in the presence of the Superintendent-General or an officer duly authorized.

4. With the exception of portions of 18 of 166 pages (pages 16 to 34) in the Joan Holmes Report, the Joan Holmes Analysis is not of relevance to the disputed issues that are now before the Tribunal for decision in the WFN and GFN Claims. The other parts of the Joan Holmes analysis are directed to surrenders of lands and oil and gas interests from Indian Reserve 63 in 1892, 1898 and 1957. The GFN and WFN Claims

pertain to the 1881 surrender of lands from Indian Reserve 62 and the subsequent setting apart of Indian Reserve 63 – and not to any subsequent actions or surrenders of Indian Reserve 63 lands or interests.

5. Though pages 16 to 34 of the Joan Holmes Report address matters that are relevant to the GFN and WFN Claims, the analysis is not of necessity for the Tribunal's determination of the WFN or GFN Claims because:

(a) the analysis is in the form of references to and direct quotation from primary source historical documents which are otherwise available for the Tribunal to read and which counsel can present as part of the common book of documents; and

(b) the limited narrative analysis provides no insight or context that is helpful to or beyond the ability of the Tribunal, without expert assistance, to achieve or understand on reading the primary source historical documents that are referenced and quoted, and on considering the submissions of counsel.

Statutes and Rules Relied Upon

6. The *Specific Claims Tribunal Act* generally and sections 12 and 13 in particular.

7. The *Specific Claims Tribunal Rules of Practice and Procedure* and Rules 2, 3, 4, and 5 in particular.

8. The *Federal Courts Rules* generally and Rule 52.5 in particular.


THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. The Claims.

2. The Agreed Statement of Issues – Validity Phase.

3. Canada's Case Management Brief, September 18, 2014.
4. Affidavit (to be sworn) of Jennipher Ranger, Legal Assistant, attaching:
 - a. excerpts of the Lockhart Report (Table of Contents; pages 1-2 & 26-27);
 - b. excerpts of the Joan Holmes Report (pages 1-2 & 16-34).
5. Canada's Memorandum of Fact and Law.
6. Such further and other materials as may be appropriate.

Dated: February 16, 2015



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