

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SISKA INDIAN BAND

F I L E D	SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	D E P O S É
	April 29, 2016 Amy Clark	
	Ottawa, ON	

Claimant

AND:

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

Respondent

**APPLICATION FOR LEAVE AND NOTICE OF APPLICATION TO HAVE
EXPERT WITNESS TESTIMONY HEARINGS ADJOURNED**

*Pursuant to Rules 11, 29, 30, 31, and 34 of the Specific Claims Tribunal Rules of Practice
and Procedure and Section 18 of the
Specific Claims Tribunal Act*

BY: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
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RELIEF SOUGHT:

TAKE NOTICE THAT an application will be made on behalf of the Respondent (Applicant), Her Majesty the Queen in Right of Canada, for the following relief:

1. An Order for leave of the Tribunal to bring an application pursuant to Rule 30 of the *Specific Claims Tribunal Rules of Practice and Procedure* (the “Rules”); and
2. An Order pursuant to Rule 11 of the Rules that the hearings of expert witness testimony scheduled to commence May 31, 2016 be adjourned to a date to be fixed.

GROUND:

Factual Basis

1. March 9, 2016 the Tribunal issued an Endorsement that oral history evidence hearings will be held in the communities of Skuppah and Siska the week of May 16, 2016 with expert evidence hearings to be held in Vancouver beginning May 30, 2016.
2. April 19, 2016 the Tribunal issued a Notice of Hearing that the hearing of oral history evidence will be begin at Skuppah on May 16, 2016 and continue at Siska on May 18, 2016 for two and a half days in each community. The hearing of expert witness testimony will be held in Vancouver beginning May 31, 2016 over the course of seven days.
3. No dates have been set for the exchange of Memoranda of Fact and Law. No dates have been set for final arguments.
4. The Skuppah and Siska Claims before the Tribunal are scheduled to be heard together. To date, the Skuppah and Siska Claims have proceeded in lockstep with identical timelines and even a shared common book of documents. The same expert witness has been used by Skuppah and by Siska. Canada’s expert witnesses are the same in both files.
5. Canada and Skuppah jointly seek an adjournment of the expert testimony to allow those parties to explore settlement.

6. This application to adjourn the expert testimony in Siska is intended to facilitate judicial economy by reducing the risk of the same experts being called before the Tribunal on more than one occasion.

Legal Basis

7. The *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, Rule 11 states that “A party who seeks to adjourn all or part of the proceedings must make an application requesting that relief.”
8. Under Rule 30, “leave of the Tribunal is required before an application can be made to the Tribunal.”
9. Rule 3 states: “The Tribunal may make any order that is necessary to secure the just, timely or cost-effective resolution of the specific claim.”
10. The decision to adjourn is at the Tribunal’s discretion. Canada submits that an adjournment of the expert testimony to a fixed date is a practical solution to avoid the risk of the same experts being re-called before the Tribunal.
11. In the event that Canada and Skuppah are not able to achieve a settlement, the Tribunal should have the benefit of hearing from both Siska and Skuppah before reaching a decision on either Claim. The Claims have proceeded in lockstep because they share factual and legal issues. Adjourning the expert testimony to a fixed date permits exploration of settlement with Skuppah while preserving the Tribunal’s ability to hear evidence from both Skuppah and Siska if settlement fails.
12. Preserving judicial economy is the basis for Canada’s application. However, an additional factor may influence the Tribunal’s decision.
13. Siska’s Pre-Hearing Conference Brief (paragraph 16) indicates their intention to amend their Declaration of Claim. Although Siska states that the amendments are proposed to

“eliminate any potential ambiguity” in their Claim, Canada submits that the proposed amendments are a substantial expansion of Siska’s Claim. Siska has not yet brought an application to amend their Claim.

14. The present application to adjourn expert testimony to a fixed date is based on judicial economy. However, if an application to amend the Declaration of Claim is brought by Siska, Canada submits that should be further grounds for the Tribunal to order an adjournment.

CONSENT:

1. Canada has sought the consent of the Claimant.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIALS:

1. These application materials.
2. The pleadings and proceedings had and taken herein.
3. The *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119.
4. The *Specific Claims Tribunal Act*, S.C. 2008, c. 22.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: April 29, 2016

Signature of
 Respondent Lawyer for Respondent
William F. Pentney, Q.C.
Deputy Attorney General of Canada
Per: Dennis Hill, Counsel
Department of Justice
British Columbia Regional Office