

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

KAHKEWISTAHAW FIRST NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	March 18, 2013	D É P O S É
Guillaume Phaneuf		
Ottawa, ON	32	

Claimant

v.

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

Respondent

**CLAIMANT'S RESPONSE TO THE APPLICATION OF THE
RESPONDENT DATED MARCH 8, 2013**

This Response is filed pursuant to Rule 35 of the *Specific Claims Tribunal Rules of Practice and Procedure* and in accordance with the Amended Endorsement of the Honourable Madam Justice Mainville, dated February 25, 2013.

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
Department of Justice Canada
Prairie Region
123 – 2nd Avenue South, 10th Floor
Saskatoon, SK S7K 7E6
Tel: (306) 975-6455 / (306) 975-5870
Fax: (306) 975-5013
E-Mail: saskSCT-5004-11-kahk@justice.gc.ca


RESPONSE TO APPLICATION OF THE RESPONDENT

1. The Claimant opposes the Respondent's Application for an Order that certain expert reports (the "Reports") intended to be filed by the Claimant in this proceeding are subject to settlement privilege, and requests that the Application be dismissed.
2. The Claimant submits that the Respondent has failed to tender any evidence in support of its application.
3. The Claimant further submits that the Respondent has failed to satisfy the three (3) criteria that must be met to attract settlement privilege, namely:
 - (a) The litigious dispute must be in existence or within contemplation;
 - (b) The communication must have been with the express or implied intention that it would not be disclosed; and
 - (c) The purpose of the communication must be to attempt to effect a settlement.
4. The Claimant submits that the Reports were not prepared with the express or implied intention that they would not be disclosed. The Reports were commissioned and paid for solely by the Claimant and the Reports were not prepared with the intention that the Claimant would be restricted in the use or disclosure of the Reports.
5. The Claimant further submits that the purpose of the Reports was not to attempt to effect a settlement. The Reports do not contain any admissions, concessions, offers of settlement or compromises, nor do the Reports contain any information or advice as to offers of settlement or negotiations.
6. The Respondent had no involvement in the preparation of the Reports.
7. If the Reports are subject to settlement privilege, which the Claimant disputes, the Claimant submits that the Reports fall within an exception to the settlement privilege on the grounds that the public interest in disclosing the documents outweighs the public interest in preserving settlement privilege. The Claimant submits that the documents are

relevant and necessary to the circumstances of the case and the Respondent will not be prejudiced by disclosure of the Reports.

8. The Claimant disputes the Respondent's claim that an Order determining that Reports are subject to settlement privilege is necessary to preserve the integrity of the Specific Claims process or the interests of justice.
9. The Claimant further disputes the Respondent's claim that all reports, documents and communications used in the Specific Claims process are subject to settlement privilege.
10. The Claimant therefore requests the following:
 - (a) A Declaration that the Reports are not subject to settlement privilege;
 - (b) In the alternative, a Declaration that the Reports fall within an exception to settlement privilege; and
 - (c) That the Respondent's Application be dismissed.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 18th day of March, 2013.


STEPHEN M. PILLIPOW
Solicitor for the Claimant

THE W LAW GROUP
Barristers and Solicitors
300-110 21st Street East
Saskatoon, SK S7K 0B6
Telephone: (306) 244-2242
Direct Line: (306) 665-9530
Facsimile: (306) 652-0332
E-mail: spillipow@wlawgroup.com