

FILE NO.: SCT-5001-16
CITATION: 2018 SCTC 7
DATE: 20180928

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:

KEESEEKOOSE FIRST NATION

Claimant (Applicant)

– and –

HER MAJESTY THE QUEEN IN RIGHT
OF CANADA

As represented by the Minister of Indian
Affairs and Northern Development

Respondent (Applicant)

Steven W. Carey and Amy Barrington, for
the Claimant (Applicant)

Donna Harris and Jenilee Guebert, for the
Respondent (Applicant)

HEARD: September 27, 2018

REASONS ON APPLICATION

Honourable Harry Slade, Chairperson

NOTE: This document is subject to editorial revision before its reproduction in final form.

Statutes and Regulations Cited:

Specific Claims Tribunal Act, SC 2008, c 22, s 14, Preamble.

Headnote:

In this Claim, the Claimant alleges breaches of the surrender provisions of the *Indian Act* and related duties of the Crown with respect to land surrendered from Indian Reserve No. 66.

The Respondent denies the validity of the Claim.

The Parties apply, jointly, for a stay of proceedings for a period of 6 months to allow time to negotiate an agreement on grounds establishing the validity of the Claim.

The Claim is ready for hearing. If the order requested is granted, and the Parties fail to reach agreement on the basis on which the Claim may be considered valid, it will be necessary to reschedule the hearing of expert testimony and reset the hearing date. The resulting delay would frustrate the exercise by the Tribunal of its mandate to “resolve specific claims...in accordance with law and in a just and timely manner”.

Held: The Application is dismissed.

I. GROUNDS FOR THE CLAIM: THE *SPECIFIC CLAIMS TRIBUNAL ACT*

[1] In this Claim, the Keeseekoose First Nation (Claimant) alleges breaches of the surrender provisions of the *Indian Act* and related duties of the Crown, in particular:

- a. Did the Crown breach duties in relation to the taking of the surrender vote? If so, have grounds been established for a finding that the Claim is valid based on paragraph 14(1)(b) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [SCTA]?
- b. Did the surrender comply with the requirements of the *Indian Act*? If not, was the disposition of the surrendered land an illegal disposition of reserve lands within the meaning of paragraph 14(1)(d) of the *SCTA*?
- c. Was the surrender improvident and, if so, have grounds been established for a finding that the Claim is valid based on paragraph 14(1)(b) of the *SCTA*?

[2] This specific claim rises out of Crown actions in 1909 to obtain a surrender (*Indian Act*) by the Claimant of 7,600 acres of reserve land originally set apart as Indian Reserve No. 66 for the Saulteaux Band following its adhesion to Treaty 4 on September 24, 1875. The Claimant is the successor in interest in the Reserve.

II. THE APPLICATION

[3] The Parties apply, jointly, for a stay of proceedings for a period of 6 months, to expire in March 2019 (Application). The purpose is to allow time to negotiate an agreement on grounds establishing the validity of the Claim. As the Claim is bifurcated into validity and compensation phases an agreement would result in the commencement of the compensation phase.

[4] The Application, by letter filed with the Tribunal on September 26, 2018, reads:

Please place the within letter before the Honourable Justice Harry Slade prior to the pre-hearing CMC scheduled to take place on the above-noted file on September 27, 2018.

The parties jointly request a six month stay of proceedings and an adjournment of the expert evidence hearing scheduled for November 13-16, 2018 to see if the validity stage of above-noted Claim can be resolved outside of the Tribunal.

Both parties are committed to reconciliation and prefer to resolve this Claim through negotiation, if possible. The parties submit that a six month stay of proceedings would provide the parties an opportunity to determine whether a negotiated resolution is feasible. We request this opportunity to do so prior to the parties and Tribunal spending additional time and resources on this Claim.

Both parties have filed historical expert reports and response reports in May and August 2018, which will be relied upon.

Subject to the consideration of the Tribunal, over the next six months the parties agree to undertake the following:

- advise the Tribunal in writing on or before January 14, 2019 of our progress towards negotiating a resolution;
- provide the Tribunal with a plan of scheduled meetings, once one is in place, with the first meeting arranged to take place on or by October 22, 2018;
- provide the Tribunal with status reports upon request;
- if it appears the parties are unable to resolve *the validity phase* by *March 2019*, the parties will request a CMC by April 2, 2019 to reschedule the expert evidence hearing; and
- that either party may reactivate the Claim upon 30 days' written notice to the opposing party and Tribunal. [emphasis added]

III. BACKGROUND TO APPLICATION

[5] The Claim was filed with the Tribunal on September 30, 2016. Pre-hearing procedures for the hearing of the Claim in the validity phase are substantially complete, and the matter is set down for a hearing of the expert witnesses and examination on their respective reports to commence in the Saskatoon area on November 13, 2018.

[6] The Claim was first presented to the Minister of Indian Affairs and Northern Development under the government policy entitled “In All Fairness: A Native Claims Policy” which is administered by the Specific Claims Branch (SCB). The Claimant sought the Ministerial acceptance of the Claim for negotiation. Nine years later the Claim was accepted in part (October 16, 2008). Lacking resolution, the SCB closed its file on May 27, 2014.

IV. PROCEDURAL HISTORY

[7] There have been several procedural Orders and processes related to the marshaling of evidence in preparation for hearing. These include a hearing in the Keeseekoose community on May 30-31, 2018, of oral history, other evidence from community members, and perspectives on the events which gave rise to the Claim.

[8] Expert Reports prepared by distinguished historians were filed on May 7, 2018. Responding Expert Reports were filed on August 17, 2018. Together, these contain 500 pages of text. Together, they refer to a large collection of documents considered by the authors in preparation of their Reports.

V. DISCUSSION

[9] Both Reports are thorough and balanced. In essence they relate the same story about the creation of the Reserve, the circumstances of the Claimant leading up to the surrender vote and those in which the 1909 surrender vote was taken, the actions of government officials before and after the surrender vote, and the disposition of the land after the surrender vote. Neither Responding Expert Report raises critical questions over the matters related in the others initial Reports. Their contents, considered together, obviate the need for an Agreed Statement of Facts. A Common Book of Documents has not yet been filed, but it is apparent that the Reports reference all relevant documents. The documents could be listed and produced quickly.

[10] The Claim is ready for hearing.

[11] If the order requested is granted, and the Parties fail to reach agreement on the basis on which the Claim may be considered valid, it will be necessary to re-schedule the hearing of expert testimony and reset the hearing date. It is unlikely that the hearing could be concluded in less than 4 months from March 2019. This delay of at least 6 months after the present hearing date frustrates the exercise by the Tribunal of its mandate to “resolve specific claims...in accordance with law and in a just and timely manner” (*SCTA*, Preamble).

[12] The dismissal of the Application will not undermine the performance of the Tribunal’s mandate to, by the exercise of its authority, “create conditions that are appropriate for resolving valid claims through negotiations” (*SCTA*, Preamble), as validity has not yet been determined.

[13] There is no impediment to the Parties entering negotiations to resolve any or all issues raised by the Claim while the matter remains active before the Tribunal.

VI. ORDER

[14] The Application is dismissed.

[15] The evidence for the expert hearing to commence on November 13, 2018 will be comprised of the evidence heard in the community, the Expert Reports, the documents referred to therein, and the authors' testimony.

[16] The oral submissions hearing for the validity phase is set down for February 5-8, 2019. The venue will be determined at a later date.

[17] If the Parties elect not to examine the authors of the Expert Reports, the hearing date for oral submissions in the validity phase will be brought forward to November 13-16, 2018, the dates presently scheduled for hearing the testimony of the experts. In that event the Claimant and the Respondent will file and serve their respective Memoranda of Fact and Law not later than October 25, 2018, and Response Memoranda of Fact and Law, if any, not later than November 9, 2018. Each Memorandum of Fact and Law is to be no longer than forty pages. The Memoranda of Fact and Law may cross-refer to portions of the Expert Reports. The Response Memoranda of Fact and Law are to focus on areas of disagreement. The February 5-8, 2019 hearing dates would not be required in this case.

HARRY SLADE

Honourable Harry Slade, Chairperson

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

Date: 20180928

File No.: SCT-5001-16

OTTAWA, ONTARIO September 28, 2018

PRESENT: Honourable Harry Slade, Chairperson

BETWEEN:

KEESEEKOOSE FIRST NATION

Claimant (Applicant)

and

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

Respondent (Applicant)

COUNSEL SHEET

TO: Counsel for the Claimant (Applicant) KEESEEKOOSE FIRST NATION
As represented by Steven W. Carey and Amy Barrington
Maurice Law, Barristers & Solicitors

AND TO: Counsel for the Respondent (Applicant)
As represented by Donna Harris and Jenilee Guebert
Department of Justice