

F I L E D	SPECIFIC CLAIMS TRIBUNAL	D É P O S É
	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
	September 16, 2015	
	Nicholas Young	
Ottawa, ON	110	

SCT File No.: SCT-5001-13

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

**KAWACATOOSE FIRST NATION, PASQUA FIRST NATION,
PIAPOT FIRST NATION, MUCOWPETUNG FIRST NATION,
GEORGE GORDON FIRST NATION, MUSKOWEKWAN FIRST NATION
AND DAY STAR FIRST NATION**

Claimants

AND: STARBLANKET FIRST NATION

Claimant

AND: LITTLE BLACK BEAR FIRST NATION

Claimant

AND: STANDING BUFFALO FIRST NATION

Claimant

AND: PEEPEEKISIS FIRST NATION

Claimant

**AND: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(as represented by the Minister of Indian and Northern Development)**

Respondent

CLAIMANTS' RESPONSE TO STANDING BUFFALO FIRST NATION APPLICATION

1. The Standing Buffalo First Nation filed an Application, pursuant to Rule 30 of the Tribunal *Rules of Practice and Procedure*, to admit four documents related to correspondence between the First Nation and the Respondent and two transcripts of oral testimony from Elders Clifford Tawiyaka and Dennis Thorne before the National Energy Board; one, related to the TransCanada Keystone Pipeline hearing and the other to the Enbridge Southern Lights hearing.

2. The Application is seeking to have these documents admitted for the purpose of determining whether the Claimant, Standing Buffalo First Nation, has standing or an interest in current proceedings before the Tribunal.

Background:

3. On May 17, 1889, Order in Council 1151 set aside Last Mountain Reserve 80A as a “Fishing Station for the use of the Touchwood Hills and Qu’Appelle Valley Indians ...” On March 23, 1918 an alleged surrender of IR 80A was taken from the George Gordon, Poorman (Kawacatoose), Day Star, Muscowequon, Muscowpetung, Pasqua and Piapot First Nations.
4. On June 7, 2009 a number of the First Nations, from whom the alleged surrender was obtained, as well as other First Nations (Star Blanket First Nation and Little Black Bear) who claimed an interest in IR 80A, submitted a Specific Claim alleging a number of breaches under Canada’s Specific Claims Policy, including the assertion that the surrender in 1918 failed to comply with the surrender provisions under the *Indian Act*, as well as under Treaty #4.
5. On December 8, 2011, Canada advised the seven First Nations from whom the alleged surrender was taken that some of the allegations were accepted for negotiation but not the allegations with respect to the surrender. Canada further noted that prior to commencing negotiations it would have to determine who the proper beneficiary First Nations were for negotiation and settlement purposes, namely, which First Nations had an interest in IR 80A for settlement purposes.
6. On February 28, 2012 Canada wrote to the Claimants and other Claimant First Nations indicating who, in its opinion, it considered were proper beneficiaries eligible to participate in a process to settle the claim.
7. On June 18, 2013 the Claimants filed a Declaration before the Tribunal, subsequently amended, alleging a number of breaches of lawful obligations under the *Specific Claims Tribunal Act*, including the assertion that the surrender of IR 80A was not obtained in compliance with provisions under the *Indian Act* or Treaty #4.

8. The Little Black Bear, Star Blanket, Standing Buffalo and Peepeekisis First Nations were subsequently added as Party Claimants based on the assertion that they also had an interest in IR 80A.
9. On June 30, 2015 Mr. Justice Whalen ordered that a hearing of the Standing Sub-phase proceed to a hearing and be resolved before the hearing of the Validity Sub-phase. The date set for the Standing Sub-phase has yet to be determined.
10. However, preparation of a Common Book of Documents is proceeding for the Standing Sub-phase Hearing. The Application by Standing Buffalo seeks to have the documents it references added to the Common Book of Documents.

Transcript Evidence:

11. Upon review of the transcript evidence of Elder Thorne and Elder Tawiyaka the Claimants fail to see the relevance and probative value of the testimony to the question Standing Buffalo First Nations' interest in IR 80A. As summarized in the Application, the Elders testimony covers "the relationship between the Crown and Standing Buffalo, as well as the unique circumstances of Standing Buffalo as a member of the 7 Council Fires and a non-treaty First Nation." While this is significant testimony perhaps for the purposes of the National Energy Board Hearing it does not appear relevant for the purposes of the Standing Sub-phase Hearing.
12. Under section 13(b) of the *Specific Claims Tribunal Act*, if the Tribunal finds that the testimony is not subject to privilege under the law of evidence, it may accept the testimony whether or not that testimony would be admissible in a court of law. However, the Tribunal may consider, but is not bound by, the rules of admissibility under the law. (Reasons for Decision, Justice Mainville, Lac La Ronge Band and Montreal Lake Cree Nation v. HMTQ, 2013 SCTC 02, p.12)
13. Under the *Law of Evidence*, 6th ed, (Toronto: Irwin Law, 2011) the authors Paciocco and Struesser state as follows: "Information can be admitted as evidence only where it is relevant to a material issue in the case." In Bryant et. al., *Law of Evidence*, 3rd ed. (Markham: LexisNexis Canada 2009, p. 53) they state:

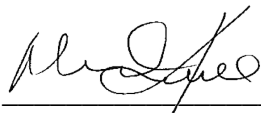
2.38 A fact will be relevant not only where it relates directly to the fact in issue, but also where it proves or enders probable the past, present or future existence (or non-existence) of any fact in issue.” (Reasons for Decision, Mainville, *supra* para 12, p.18)

14. With all due respect to the Elders and unless legal counsel can explain otherwise, the Claimants fail to see how the Elders’ testimony dealing with Standing Buffalo First Nations’ relationship with the Crown or as member of the 7 Council Fires is “material to the issue” of standing or is “relevant to a material issue” in the Standing Sub-Phase with respect to the First Nations’ interest in IR 80A.

Written Communications between legal counsel

15. The Claimants take no position with respect to the relevance and admissibility of the four pieces of written correspondence between the Respondent and legal counsel for the Standing Buffalo First Nation on the question of whether these documents are or are not protected by privilege.

All of which is respectfully submitted this 16th day of September, 2015.



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