

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
October 13, 2015		
Nicholas Young		
Ottawa, ON	115	

**SPECIFIC CLAIMS TRIBUNAL**

**BETWEEN:**

**KAWACATOOSE FIRST NATION, PASQUA FIRST NATION,  
PIAPOT FIRST NATION, MUSCOWPETUNG FIRST NATION,  
GEORGE GORDON FIRST NATION, MUSKOWEKWAN FIRST NATION  
and DAY STAR FIRST NATION**

CLAIMANTS

AND: **LITTLE BLACK BEAR FIRST NATION**

CLAIMANT

AND: **STAR BLANKET FIRST NATION**

CLAIMANT

AND: **STANDING BUFFALO DAKOTA FIRST NATION**

CLAIMANT

AND: **PEEPEEKISIS FIRST NATION**

CLAIMANT

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

RESPONDENT

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**RESPONSE TO APPLICATION OF STANDING BUFFALO DAKOTA FIRST  
NATION TO ADMIT DOCUMENTS**

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The Respondent provides the following Response to the Application of Standing Buffalo Dakota First Nation dated August 31, 2015 to have certain documents admitted by the Tribunal:

**Correspondence Between Phillips & Co. and Department of Justice**

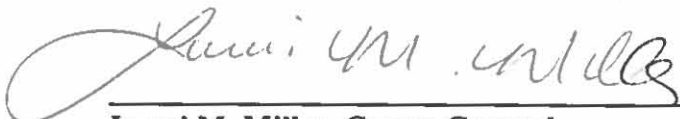
1. The Respondent respectfully submits the Tribunal should decline to exercise its expanded discretion under s. 13(1)(b) of the *Specific Claims Tribunal Act* to receive and accept evidence because:
  - a. the correspondence is not relevant to any material fact in issue; and,
  - b. the correspondence is subject to settlement privilege.
2. The Respondent has always asserted settlement privilege over the “without prejudice” settlement negotiation communication referred to in the correspondence, and stated this in the Response to the Declarations of Claim filed by all the Claimants in this action.
3. The Respondent relies on Rule 59 of the *Specific Claims Tribunal Rules of Practice and Procedure* and s. 13(1)(b) of the *Specific Claims Tribunal Act* regarding the claim of settlement privilege.

**Transcripts from National Energy Board Hearing**

4. The transcripts the Applicant seeks to admit contain testimony of Elders from the Applicant First Nation before the National Energy Board at hearings in the matter of applications for construction and operation of the Keystone Pipeline and Related Orders. The Applicants were TransCanada Keystone Pipeline GP Ltd., Enbridge Pipelines Inc. and Enbridge Southern Lights GP Inc.
5. The Respondent respectfully submits the Tribunal should decline to exercise its expanded discretion to admit evidence under s. 13(1)(b) of the *Specific Claims Tribunal Act* because the transcripts:

- a. are prior testimony offered by the Applicant for their truth and are therefore hearsay;
  - b. lack relevance to material facts in issue before the Tribunal;
  - c. do not meet the prior testimony test for admissibility;
  - d. lack probative value for the Tribunal in determining the issues in the standing sub-phase of the validity phase of the within specific claim;
  - e. lack necessity and reliability; and,
  - f. provide no benefit to the Tribunal.
6. Additionally, the transcripts are not necessary as the Applicant has an alternate way to introduce the oral history evidence, through testimony of live Elders at an oral history evidence hearing.
7. The Respondent respectfully requests the following relief:
- a. Dismissal of the within Application in its entirety; and,
  - b. Costs of the within application.

Dated this 13th day of October, 2015.

  
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**Lauri M. Miller, Crown Counsel**

  
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**Donna Harris, Crown Counsel**

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