

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**METLAKATLA INDIAN BAND**

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	August 17, 2017	D E P O S E
David Burnside		
Ottawa, ON	45	

Claimant

v.

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

Respondent

and

**KITSUMKALUM INDIAN BAND**

Applicant

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**REVISED RESPONSE OF  
HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
TO APPLICATION FOR LEAVE TO INTERVENE BY THE  
KITSUMKALUM INDIAN BAND  
Pursuant to Rule 35 of the  
*Specific Claims Tribunal Rules of Practice and Procedure***

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To: **KITSUMKALUM INDIAN BAND**  
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AND TO: **METLAKATLA INDIAN BAND**  
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1. Canada now supports Kitsumkalum Indian Band's (Kitsumkalum) intervention application and seeks to have Kitsumkalum recognized as a limited party in this proceeding to address the issue of Kitsumkalum's asserted on-going interest in Metlakatla Indian Reserve # 2 (Reserve) in evidence and submissions, for the following reasons:
  - a) Kitsumkalum has now advised Canada that Kitsumkalum asserts an on-going interest in the Reserve at the time of the Metlakatla Indian Band's (Metlakatla) surrender in 1906;
  - b) the issue of Kitsumkalum's asserted on-going interest is relevant to whether Metlakatla had either a full or a proportional interest in the Reserve at the time of Metlakatla's surrender;
  - b) if the issue of Kitsumkalum's asserted on-going interest is not litigated in this proceeding, then the Tribunal, and Canada, would unfairly run the risk of over-compensating Metlakatla in this proceeding; and
  - c) if Kitsumkalum is a limited party on the issue of Kitsumkalum's asserted on-going interest then the resolution of this issue in this proceeding will be binding on Metlakatla, Kitsumkalum and Canada, and the Tribunal, and Canada, will be able to avoid the risk of over-compensating Metlakatla in this proceeding.
2. Kitsumkalum's asserted on-going interest is dependent on the issue of whether Kitsumkalum had an interest in the Reserve from 1881 to 1888/1892 when Canada divided Tsimpsean IR # 2 into two parts, allotting the northern half to the Port Simpson Band (now the Lax Kw'alaams Band) and the southern part (the Reserve) to Metlakatala. If Kitsumkalum did not have an interest in the Reserve from 1881 to 1888/1892, then Kitsumkalum did not have an on-going interest in the Reserve in 1906.

3. Accordingly, Canada will be seeking to amend (Proposed Amendment) the Response to the Declaration of Claim to plead:
  - a) Kitsumkalum's asserted interest in the Reserve from 1881 to 1888/1892;
  - b) Kitsumkalum's asserted on-going interest in the Reserve at the time of Metlakatla's surrender in 1906;
  - c) any Kitsumkalum on-going interest in the Reserve at the time of Metlakatla's surrender in 1906 would correspondingly reduce Metlakatla's interest in the Reserve;
  - d) certain other Tsimshian Nations are theoretically able to assert the same interests. They include the Kitselas First Nation, the Gitxaala Nation, the Gitga'at First Nation and the Kitasoo Band (Other Tsimshian Indigenous Peoples); and
  - e) any on-going interests for the Other Tsimshian Indigenous Peoples in the Reserve at the time of Metlakatla's surrender in 1906 would reduce Metlakatla's interests.
4. Canada will be asking the Tribunal to issue s 22 notices to the Other Tsimshian Indigenous Peoples.
5. Accordingly, Canada seeks to have Kitsumkalum recognized as a limited party in this proceeding to address the issues in the Proposed Amendment.
6. The Tribunal and the parties will be able to take steps to minimize any required delay in this Metlakatla proceeding pending resolution of the issues in the Proposed Amendment by seeking to determine other substantial issues in Metlakatla's claim.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: August 17, 2017

  
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Signature of  
 Respondent       lawyer for Respondent

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Majesty the Queen in right of Canada