

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

KAHKEWISTAHAW FIRST NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	May 5, 2017	D E P O S É
David Burnside		
Ottawa, ON	11	

Claimant

v.

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

Respondent

**NOTICE OF APPLICATION TO HAVE DOCUMENTS
ADMITTED INTO EVIDENCE**

Pursuant to Rule 34 of the *Specific Claims Tribunal Rules of Practice and Procedure*, and Section 13(1)(b) of the *Specific Claims Tribunal Act*

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by Lauri M. Miller,
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TAKE NOTICE THAT, pursuant to the Endorsement of the Honourable Barry MacDougall dated April 27, 2017, an application is made on behalf of the Applicant, Kahkewistahaw First Nation, before the Specific Claims Tribunal, for the following relief:

1. An Order pursuant to Section 13(1)(b) of the *Specific Claims Tribunal Act* that the following documents are admissible as evidence in the hearing of this matter:
 - (a) The Affidavit of Lawrence Kay, unsworn; and
 - (b) The Affidavit of Joseph Crowe, sworn September 19, 1979.

AND TAKE NOTICE that this Application is brought on the following grounds:

1. In the late 1970's, Kahkewistahaw First Nation was contemplating proceeding with a potential claim relating to the surrender of a portion of Kahkewistahaw Indian Reserve No. 72A in 1944. At that time, individuals were identified as having knowledge which may be relevant to the potential claim, including Joseph Arthur Crowe and Lawrence Kay.
2. In order to ensure that the evidence of those individuals was preserved for a potential claim, affidavits were prepared for Joseph Arthur Crowe and Lawrence Kay.
3. Lawrence Kay and Joseph Arthur Crowe are now deceased.
4. The Affidavits are offered to prove the truth of their contents. Given that Joseph Arthur Crowe and Lawrence Kay are deceased, there is no contemporaneous opportunity to cross-examine them. As such, their Affidavits are hearsay.
5. The Affidavits are admissible under the principled approach to hearsay, as they are both necessary and reliable.

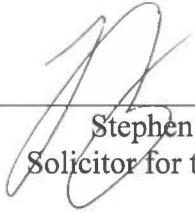
AND FURTHER TAKE NOTICE the Respondent has not consented to the relief sought by the Applicant.

THE APPLICANT relies on the following materials and evidence:

1. The pleadings and proceedings taken herein;
2. Affidavit of Louis Taypotat, sworn on April 26, 2017;
3. Memorandum of Law and Argument, dated May 4, 2017; and
4. Such further and other material as counsel may advise and the Tribunal may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated this 4 day of May, 2017.



Stephen M. Pillipow
Solicitor for the Claimant

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