

FILE NO.: SCT-7001-16
DATE: 20161021

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
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TSESHAHT FIRST NATION)	
)	Bram Rogachevsky and Elisa Penn, for the
)	Claimant
Claimant)	
)	
– and –)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	Terry McCormick and Deborah McIntosh,
Affairs and Northern Development)	for the Respondent
)	
)	
Respondent)	
)	
)	
)	
)	HEARD: October 13, 2016
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ENDORSEMENT AND ORDER

Honourable Barry MacDougall

A Case Management Conference (CMC) was held by teleconference on October 13, 2016, at 12:00 P.M., Eastern Time (Ottawa).

[1] The Parties indicated that a Notice to others under subsection 22(1) of the *Specific Claims Tribunal Act* is not required for this Claim and the Tribunal in its opinion, agrees that Notice is not required.

[2] The Claimant undertakes to retain an expert to provide an opinion on occupation of Iwachis I.R. 3 and its use as a fishing site within the next two weeks with the expectation that a report will be produced within the next two months.

[3] Prior to the next CMC, once the Claimant's expert report has been served on the Respondent, the Respondent will decide whether or not it will retain an expert to reply and advise the Claimant.

[4] Prior to the next CMC, the Claimant shall decide if it will be relying on transcripts of deceased persons or if *viva voce* testimony or evidence will also be relied on. Should the Claimant decide to rely on *viva voce* testimony or evidence, the Claimant will determine if an interpreter will be required.

[5] Should the Claimant decide to rely on *viva voce* testimony or evidence, an Oral History Protocol shall be discussed at the next CMC including whether the Respondent will want an opportunity to cross-examine the Claimant's witnesses.

[6] Within 30 days, the Claimant shall provide a List of Documents it seeks to be included in a Common Book of Documents. The Respondent will respond to the Claimant's proposal within three weeks thereafter and any issues pertaining to the Common Book of Documents shall be discussed at the next CMC.

[7] Prior to the next CMC, the Respondent will provide its position on a Common List of Issues.

[8] The Parties have agreed to commence preparation on an Agreed Statement of Facts and to provide a status update at the next CMC.

[9] Prior to the next CMC, the Claimant shall provide the Respondent with a proposed draft procedural timeline.

[10] The Parties propose that the hearing on the validity of the Claim should be held in Port Alberni, British Columbia.

[11] The next CMC will be held by teleconference on **December 20, 2016**, at 1:00 P.M., Eastern Time (Ottawa).

[12] Pursuant to Rule 10 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, and upon the request of the Parties, **THE TRIBUNAL ORDERS that:**

- a. The hearing of this Claim shall proceed in two separate stages, in order to deal with issues of validity and compensation, respectively;
- b. The Tribunal will first hold a hearing and render its decision on the validity of the Claim (Validity Stage);
- c. The second stage of this claim pertaining to compensation, including the principles of compensation and any applicable compensation criteria (Compensation Stage), will only proceed if the Claim is found to be valid. The Compensation Stage will not begin until the Validity Stage has been completed, the issue(s) of validity decided, and the Parties have exhausted any rights they may have for judicial review to the Federal Court of Appeal or appeal to the Supreme Court of Canada;
- d. If the Claim is ultimately determined to be valid, the Parties will have a reasonable amount of time to gather evidence relating to compensation, including expert evidence, before the Compensation Stage begins;
- e. The Parties may delay taking steps to prepare their cases on compensation until a determination is made on validity; and,

f. In relation to this Order of Bifurcation, there shall be no costs awarded to either party.

BARRY MACDOUGALL

Honourable Barry MacDougall