

FILE NO.: SCT-5006-19
CITATION: 2020 SCTC 6
DATE: 20201202

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:

WITCHEKAN LAKE FIRST NATION

Claimant (Respondent)

– and –

HER MAJESTY THE QUEEN IN RIGHT
OF CANADA

As represented by the Minister of Crown-
Indigenous Relations

Respondent (Applicant)

Amy Barrington and Ryan M. Lake, for the
Claimant (Respondent)

Jody Lintott and Melissa Nicolls, for the
Respondent (Applicant)

HEARD: September 17, 2020

REASONS ON APPLICATION

Honourable Victoria Chiappetta

NOTE: This document is subject to editorial revision before its reproduction in final form.

Statutes and Regulations Cited:

Specific Claims Tribunal Act, SC 2008, c 22, s 13(1).

Rules of Civil Procedure, RRO 1990, Reg 194, r 2.1.

Headnote:

In this Claim, the Claimant, Witchekan Lake First Nation, alleges that the Respondent (Canada) breached its statutory and fiduciary obligations with respect to the reserve creation process for the Witchekan Lake Reserve.

In this Application, the Respondent argues that the Federal Court of Canada has exclusive jurisdiction over the Claim.

The Claimant argues that the Federal Court of Canada does not have exclusive jurisdiction over this Claim as this Claim does not deal with the Crown's failure to provide adequate reserve land under Treaty 6, but rather the unlawful alienation of land that was reserved for the Witchekan Lake First Nation.

The Saskatchewan Treaty Land Entitlement Framework Agreement and the Witchekan Lake Treaty Land Entitlement Agreement both provide that the Federal Court of Canada has exclusive jurisdiction over any disagreements between the Parties regarding the interpretation of a provision in the Agreements.

The Claim is stayed and shall remain stayed unless and until the Federal Court of Canada rules that the Claim may proceed before the Tribunal.

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I. OVERVIEW

[1] The Respondent, Her Majesty the Queen in Right of Canada (Canada), submits that the Federal Court of Canada (Federal Court) has exclusive jurisdiction to determine the issues at the heart of this Claim brought by the Claimant, Witchekan Lake First Nation (Witchekan). Canada therefore seeks leave to make an Application and for an Order striking or in the alternative staying the Claim. For reasons set out below, leave is granted and the Claim is stayed.

II. BACKGROUND

[2] On July 23, 2019, Witchekan filed a Declaration of Claim with the Specific Claims Tribunal (Tribunal) asserting that Canada breached its statutory and fiduciary obligations with respect to the reserve creation process for the Witchekan Lake Reserve. Witchekan claims in part that after the reserve was surveyed in 1913, lands were unlawfully alienated from the reserve in 1918 and 1919.

[3] In 1992, Canada, the Province of Saskatchewan and numerous First Nations signed the Saskatchewan Treaty Land Entitlement Framework Agreement (TLE Framework Agreement) in recognition that certain First Nations did not receive the amount of land they should have received under Treaty 4, Treaty 6 and Treaty 10.

[4] In 1993, Canada and Witchekan signed the Witchekan Lake Treaty Land Entitlement Agreement (Witchekan TLE Agreement). The Witchekan TLE Agreement contains many of the same provisions as the TLE Framework Agreement.

[5] Pursuant to the TLE Framework Agreement and the Witchekan TLE Agreement, Canada and the Province of Saskatchewan have paid Witchekan monies to buy shortfall land owed under Treaty 6, and additional lands, as well as additional monies. In both agreements, Witchekan confirmed it had obtained independent legal advice. Both agreements contain “full and final satisfaction” clauses, in which the Parties agreed that the agreements “are intended to and do give effect to the full and final satisfaction of any and all obligation or undertaking of Canada relating to [outstanding] Treaty land entitlement” in respect of Witchekan (section 15.04 of both Agreements).

[6] Both the TLE Framework Agreement and the Witchekan TLE Agreement provide that the

Federal Court has exclusive jurisdiction to determine any disagreement concerning any matter connected with the agreements. Specifically, section 20.20 of the TLE Framework Agreement and section 20.18 of the Witchekan TLE Agreement both provide as follows:

COURT PROCEEDINGS:

Notwithstanding Article 19, save and except for those questions to which arbitration has been agreed to in section 19.02, in the event the parties concerned are unable to agree on any matter, including a question of interpretation of any term, covenant, condition or provision of this Agreement, the determination of any such disagreement, and the enforcement thereof, shall be within the exclusive jurisdiction of the Federal Court of Canada.

[7] Witchekan submits that the exclusive jurisdiction sections do not apply to this Claim as this Claim does not deal with the Crown's failure to provide adequate reserve land under Treaty 6, but rather the unlawful alienation of land that was reserved for Witchekan. It relies on subsection 15.01(c) of both the TLE Framework Agreement and the Witchekan TLE Agreement which provides in relevant part as follows:

- (c) notwithstanding subsections (a) and (b) above, but for greater certainty, nothing herein is intended, nor shall it be construed, as affecting any right, action or claim of [any Entitlement] Band (other than in respect of outstanding Treaty land entitlement) including any right, claim or action in respect of any improper surrender, alienation, or other disposition by Canada of Reserve lands, claims relating to traditional Indian lands (unrelated to outstanding Treaty land entitlement), or any other right, action or claim (unrelated to outstanding Treaty land entitlement) which may now exist or hereafter arise. Provided, however, nothing in this section shall be interpreted as any admission or denial by Canada respecting the validity of any such actions or claims.

[8] Canada disagrees with the interpretation of subsection 15.01(c) as advanced by Witchekan. It relies in part upon paragraph 15(1)(e) of the *Specific Claims Tribunal Act*, SC 2008, c 22, which provides that a claim cannot be filed with the Tribunal that is based on an agreement that provides for another dispute resolution mechanism.

III. ANALYSIS

[9] Witchekan argues in part that the claim that Witchekan settled by way of the TLE Framework Agreement and the Witchekan TLE Agreement solely resolved Canada's failure to set

aside sufficient reserve land in satisfaction of the Treaty 6 reserve lands clause. In contrast, it is submitted, the within claim details Canada's alleged dishonourable conduct alienating lands reserved for Witchekan's use and benefit along with the corresponding deprivations arising therefrom. As a result, it is alleged that Canada is liable to restore Witchekan to the position it ought to be in had Canada's breaches of statutory and/or fiduciary duty not occurred. Significantly, Witchekan submits that subsection 15.01(c) of the TLE Framework Agreement and the Witchekan TLE Agreement expressly preserves Witchekan's right to pursue other claims, including alienation claims.

[10] Canada disagrees. It argues that the TLE Framework Agreement and the Witchekan TLE Agreement have addressed all issues raised in the within Claim. Resolution of the Claim, therefore, will require the application of the TLE Agreements, which attracts the Federal Court's exclusive jurisdiction under those Agreements pursuant to section 20.20 of the TLE Framework Agreement and section 20.18 of the Witchekan TLE Agreement.

[11] Simply stated, the issue on this application is whether the Claim falls within those enumerated and contemplated by subsection 15.01(c) of both the TLE Framework Agreement and the Witchekan TLE Framework Agreement as carve outs or exceptions to the exclusive jurisdiction of the Federal Court. The Parties are unable to agree to the interpretation of subsection 15.01(c) and the application of that interpretation to the Claim.

[12] Section 20.20 of the TLE Framework Agreement and section 20.18 of the Witchekan TLE Agreement both provide that if the Parties are unable to agree on the interpretation of a provision of the Agreement, the determination of such disagreement shall be within the exclusive jurisdiction of the Federal Court. The Tribunal is therefore without jurisdiction to resolve the issue on this application. It is the Federal Court that shall properly decide the issue as to whether subsection 15.01(c) of the Agreements permit the Claim to proceed before the Tribunal despite the exclusive jurisdiction sections of the Agreements.

IV. CONCLUSION

[13] For reasons set out above, pursuant to subsection 13(1) of the *Specific Claims Tribunal Act*, SC 2008, c 22, and rule 2.1.01 of the *Ontario Rules of Civil Procedure*, RRO 1990, Reg 194, the Claim is stayed and shall remain stayed unless and until the Federal Court rules that subsection

15.01(c) of both the TLE Framework Agreement and the Witchekan TLE Agreement permit Witchekan to bring this Claim before the Tribunal. The costs of this Application shall be reserved should the Federal Court rule that the Claim may proceed before the Tribunal.

VICTORIA CHIAPPETTA

Honourable Victoria Chiappetta

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

Date: 20201202

File No.: SCT-5006-19

OTTAWA, ONTARIO December 2, 2020

PRESENT: Honourable Victoria Chiappetta

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WITCHEKAN LAKE FIRST NATION

Claimant (Respondent)

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations**

Respondent (Applicant)

COUNSEL SHEET

TO: Counsel for the Claimant (Respondent) WITCHEKAN LAKE FIRST NATION
As represented by Amy Barrington and Ryan M. Lake
Maurice Law, Barristers & Solicitors

AND TO: Counsel for the Respondent (Applicant)
As represented by Jody Lintott and Melissa Nicolls
Department of Justice