FILE NO.: SCT-5001-13
CITATION: 2016 SCTC 1
DATE: 20160118

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

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 (Respondents)	David Knoll, for the Claimant (Respondents)
– and –	
STAR BLANKET FIRST NATION Claimant	Aaron B. Starr, for the Claimant
– and –	
LITTLE BLACK BEAR FIRST NATION Claimant	Ryan Lake and Aaron Christoff, for the Claimant
– and –	
STANDING BUFFALO DAKOTA FIRST NATION Claimant (Applicant)	Mervin C. Phillips and Leane Phillips, for the Claimant (Applicant)
– and –	
PEEPEEKISIS FIRST NATION	T.J. Waller, Q.C., for the Claimant

Claimant (Respondent)

– and –

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

Respondent (Respondent)

(Respondent)

Lauri M. Miller and Donna Harris, for the Respondent (Respondent)

HEARD: October 19, 2015

REASONS ON APPLICATION

Honourable W.L. Whalen

ON THE APPLICATION BY STANDING BUFFALO DAKOTA FIRST NATION to allow the admission of certain documents and transcripts into evidence at the hearing of the validity phase of the Claim.

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

Cases Cited:

Tsilhqot'in Nation v British Columbia, 2004 BCSC 148, 24 BCLR (4th) 296; *Mitchell v MNR*, 2001 SCC 33, [2001] 1 SCR 911; *R v Truscott*, [2006] OJ No 4171 (CA), 213 CCC (3d) 183; *Doig River First Nation and Blueberry River First Nations v Her Majesty the Queen in Right of Canada*, 2015 SCTC 2; *R v Arp*, [1998] SCJ No 82, [1998] 3 SCR 339; *R v Hawkins*, [1996] 3 SCR 1043, 141 DLR (4th) 193; *R v Khan*, [1990] 2 SCR 531; *R v Starr*, [2000] 2 SCR 144; *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 153 DLR (4th) 193.

Statutes and Regulations Cited:

Specific Claims Tribunal Act, SC 2008, c 22, ss 13, 14, 15, 22.

Specific Claims Tribunal Rules of Practice and Procedure, SOR/2011-119, r 30.

Indian Act, RSC 1906, c 81, s 49.

Authors Cited:

David M Paciocco and Lee Stuesser, *The Law of Evidence*, 6th ed (Toronto, Irwin Law Inc, 2011).

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I. INTRODUCTION

[1] One of the eleven Claimants in this case, Standing Buffalo Dakota First Nation ("Standing Buffalo"), brings an Application, together with the required Application for Leave, to allow the admission of two sets of documents at the hearing of the validity phase of the Claim. The first set of documents (the "Correspondence") comprises five letters between the Respondent Crown and the Applicant. The Respondent Crown objects to their admission on the basis of relevance and settlement privilege. The second set of documents (the "Elder Transcripts") comprises three excerpts of transcripts of Elder testimony given before the National Energy Board in 2007, including one map. The Respondent Crown and several of the Applicant's fellow Claimants (Kawacatoose First Nation et al and Peepeekisis First Nation) object to the admission of the Elder Transcripts on the basis of relevance. The Respondent Crown further submits that the Elder Transcripts constitute evidence given in a prior proceeding, and as such, fails to meet the established legal test for admissibility. Standing Buffalo submits that all of the documents are relevant and satisfy all other criteria of admissibility.

[2] The Tribunal adjudicates this dispute pursuant to sub-section 13(1)(*b*) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [*SCTA*], and Rule 30 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119 [*Rules*], which provide respectively as follows:

Under the *SCTA*:

> **13.** (1) The Tribunal has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, all the powers, rights and privileges that are vested in a superior court of record and may
>
> …
>
> (*b*) receive and accept any evidence, including oral history, and other information, whether on oath or by affidavit or otherwise, that it sees fit, whether or not that evidence or information is or would be admissible in a court of law, unless it would be inadmissible in a court by reason of any privilege under the law of evidence;

Under the *Rules*:

> **30.** Except for an application referred to in the Act, subrule 60(2) or Part 11, leave of the Tribunal is required before an application can be made to the Tribunal.

[3] By virtue of the fact of this hearing, it is obvious that the leave required under Rule 30 is granted.

II. BACKGROUND

A. The Claims

[4] The Claims concern the surrender and disposition of Last Mountain Indian Reserve 80A ("IR 80A") in the Qu'Appelle Valley, Saskatchewan.

[5] IR 80A was comprised of 1,408 acres on the south side of Last Mountain Lake, northwest of present-day Regina. It was officially set aside as a reserve by order-in-council in 1889, and was described only generally as a "[f]ishing [s]tation for the use of the Touchwood Hills and Qu'Appelle Valley Indians". Precisely which First Nations come within the descriptor "Touchwood Hills and Qu'Appelle Valley Indians" and which ones had an interest in IR 80A was not stated and is therefore not clear. This is a threshold issue to be resolved in these Claims.

[6] By at least the 1910s, IR 80A had become increasingly sought after and used by the non-Aboriginal population of the area, and in 1918 the federal government accepted a surrender of the land. The legality of the surrender has been challenged on several fronts, including for: non-compliance with the *Indian Act*, RSC 1906, c 81, s 49 [*Indian Act*]; the Crown's failure to meet its fiduciary obligations (for a variety of reasons); and, for those Claimants who are party to Treaty 4, for non-compliance with the terms of the Treaty. Several of the Claimants submit that the surrender was illegal because consent was not obtained by all those interested in the Reserve, and various facts asserted in their respective Declarations of Claim pertain to which First Nations had an interest in IR 80A and which did not.

[7] Following acceptance of the surrender, the Crown put the lands to a number of uses. Over time it sold lots and leased parcels for various purposes, including for grazing, a country club, and local government use. The Claimants submit that the leases breached the terms of the surrender, which required the Crown to sell the land. They also allege a number of other breaches of Crown fiduciary duty following the surrender of IR 80A, including allowing the

construction of a road over the reserve without authorization or compensation, permitting trespass by squatters and campers, failing to prevent the removal of gravel and water, and by accepting inadequate lease terms for the lands. In whole, the Claims are grounded in sub-sections 14(1)(*b*), (*c*), (*d*), and (*e*) of the *SCTA*.

[8] The Applicant, Standing Buffalo, for its part, alleges that it was improperly excluded from the surrender and its proceeds, thus rendering the surrender illegal under the *Indian Act*, and also constituting a breach of what it refers to as its "ally-ship" relationship with the Crown. The documents it seeks to admit are allegedly evidence of the ally-ship relationship, which Standing Buffalo describes in its Declaration of Claim as a "special relationship" that "creates heightened obligations on the Crown in comparison to the Crown's obligations to Aboriginal people in general, based on the fact that the specific obligations of the Crown in relation to a particular Aboriginal people arise out of the specific nature of their relationship" (Standing Buffalo's Declaration of Claim, at para 18).

[9] The Crown denies all allegations of liability, asserting that it has met its lawful obligations with respect to the surrender and disposition of IR 80A.

[10] On the consent of the Parties, the Tribunal directed on May 11, 2015 that the Claims be heard in two separate phases, one focussed on their validity; and, the second, if validity is established, on the amount of compensation owed, if any. The validity phase will be divided into sub-phases, including a preliminary standing sub-phase to determine those interested in IR 80A and thus entitled to proceed to the hearing on validity. Once the standing sub-phase has been concluded, the validity phase will proceed to resolve whether the Claims are valid.

B. Other Proceedings

[11] The Claims were originally filed with the Minister of Indian Affairs in 2008 as specific claims in the government negotiation process by seven of the original Claimants, but not including Standing Buffalo. The Minister decided to negotiate the claims in part, and invited Standing Buffalo to participate. The Respondent Crown states that the invitation to Standing Buffalo was extended on a "without prejudice" basis (Respondent's Response to Standing Buffalo's Declaration of Claim, at para 5). By contrast, Standing Buffalo states that Canada's invitation to participate in the negotiations was based on Canada's alleged acknowledgment that

Standing Buffalo had an interest in IR 80A (Standing Buffalo's Declaration of Claim, at para 8). In any event, Standing Buffalo did not submit a specific claim to the Minister, and the original Claimants filed a Declaration of Claim with the Tribunal on June 20, 2013 (Respondent's Response to Standing Buffalo's Declaration of Claim, at para 6). Therefore, negotiations with the Minister did not proceed.

[12] Prior to the specific claim, Standing Buffalo had filed a comprehensive claim against the Crown in the Federal Court in 2011 (the "Federal Court Action"). This Federal Court Action had the potential to overlap with the Claims presently before the Tribunal, and section 15(3) of the SCTA prohibits parallel proceedings from being filed with the Tribunal. Canada and Standing Buffalo eventually reached agreement on an amendment in the Federal Court Action, thereby eliminating parallel claims on any of the matters before the Tribunal in the present proceeding. As a result, the Respondent Crown did not object to Standing Buffalo filing a claim with the Tribunal on October 17, 2014. Correspondence between Crown counsel and Standing Buffalo's counsel regarding Standing Buffalo's joining the present Claims constitute part of the documents under consideration in this Application.

III. DOCUMENTS TENDERED FOR ADMISSION

[13] The Applicant seeks the admission of two sets of documents:

a. The Correspondence, comprised of five letters between counsel for the Applicant and counsel for the Respondent Crown discussing the Applicant's participation in the present proceeding and the amendment of the Applicant's Federal Court Action to enable such participation; and

b. The Elder Transcripts taken from the National Energy Board hearings on April 12, June 14, and August 21, 2007 in respect of proposed resource development projects not related to the dispute in the present case.

[14] The Respondent Crown objects to the admission of both sets of documents. The Claimants Kawacatoose First Nation et al and Peepeekisis First Nation object to the admission of the Elder Transcripts on the basis of relevance, but take no position on the Correspondence. The Claimants Little Black Bear First Nation and Star Blanket First Nation take no position with

respect to any of the documents.

A. The Correspondence

[15] The first of the five letters in question is dated June 19, 2014, and is addressed to the Respondent's counsel, Lauri Miller, from Mervin C. Phillips, counsel for Standing Buffalo. The letter, dated July 23, 2014 is Ms. Miller's response. In the letter, dated July 31, 2014, Mr. Phillips replies to Ms. Miller, who responds by the letter dated August 1, 2014. In the final letter, dated July 15, 2015, Mr. Phillips reconfirms production of the documents he wants to put in evidence and recaps his position on other matters earlier corresponded. The Applicant did not formally request admission of this fifth letter in its written submissions, but offered it as an exhibit and discussed it at oral argument. That letter having been introduced, the Crown took objection on the basis of settlement privilege.

[16] As originally presented in the Application for admission into evidence, the Respondent raised an objection based on settlement privilege. However, during oral submissions on the Application, counsel resolved that objection by agreeing to redaction of parts of the letters. As a result, the settlement privilege issue was resolved. Copies of the letters in their consensually redacted form appear in the Appendix to these Reasons as Exhibits "A", "B", "C", "D" and "E". The letters are not complicated or long, and do not require detailed summary. It is easiest to read them directly for their content.

1. Positions of the Parties

[17] The Applicant argues that the Correspondence, and in particular Ms. Miller's letter of July 23, 2014, constitutes an agreement between Standing Buffalo and the Respondent Crown as to the proper forum of adjudication, and as such, is directly relevant to the present proceeding because it is "a direct admission by the Respondent Crown that it believes that Standing Buffalo has an interest in the within claim and is a party that has standing in these proceedings" (Applicant's Written Submissions, at para 15). The Applicant argues that the admission contained in the Correspondence has a direct bearing on the standing sub-phase of these proceedings and is therefore relevant. It further submits that the Correspondence illustrates the Crown's conduct towards the Applicant, which is relevant to determining whether the Crown has acted in accordance with its honourable obligations in the positions it has taken before the

Tribunal. In the Applicant's view, the Correspondence shows "a complete agreement as to forum and standing and the Crown cannot deny there is standing for Standing Buffalo and should be estopped from" doing so (Applicant's Reply Written Submissions, at para 7).

[18] In oral argument, Standing Buffalo explained more fully its understanding of its special ally-ship relationship with the Crown as a feature that continues to infuse all of its interactions with the Crown, including present-day negotiations. It seeks to use the Correspondence to show the Crown's agreement and cooperation in switching from the Federal Court to the Tribunal as evidence of the ongoing "ally-ship" and the Crown's practice of looking out for Standing Buffalo, rather than simply as proof of the Crown's acknowledgment of Standing Buffalo's interest in IR 80A. It argues that to not admit documents probative of the ally-ship relationship at this early stage would be to determine that ally-ship is not relevant before the issues in these Claims are determined and the Applicant has been able to present its arguments grounding its ally-ship claims.

[19] The Respondent Crown argues that the Correspondence does not meet the basic test of relevance. "The sole purpose of the documents was to discuss the abeyance of the Applicant's Federal Court action before becoming a party to the Claim" and has no bearing on standing (Respondent Crown's Written Submissions, at para 15). The Correspondence is not probative of an ally-ship relationship, which the Respondent denies exists. The Crown says it did not encourage Standing Buffalo to choose one forum over the other in pursuit of its claims against the government, and the Correspondence is not relevant to an ally-ship relationship in any way. Further, the Respondent Crown argues that the ally-ship relationship itself is not relevant in these Claims. While the Parties have not agreed to an Agreed Statement of Issues, it is nonetheless clear that a major issue is the intention of the Crown vis-à-vis IR 80A and what use the various Claimants made of the IR 80A lands. According to the Respondent Crown, ally-ship is not relevant to these issues, and its existence does not make any fact in issue more or less likely.

[20] The Respondent Crown also seeks to block the admission of the Correspondence on the basis of settlement privilege, based on the references to and discussion of the February 2012 letter from the Department of Indian and Northern Affairs regarding the Applicant's participation in the specific claims process. That letter was expressly marked "without prejudice", and the first

letter in the Correspondence states that that letter was written in pursuit of settlement of the claim. The Respondent submits that the Applicant should not be able to "bypass settlement privilege over this communication by introducing it through the subject documents" (Respondent Crown's Written Submissions, at para 27).

[21] At oral argument, the Respondent stated that its purpose in asserting privilege was to protect privileged communications regarding specific claims negotiations, and that it had no insidious motive that would undermine the honour of the Crown. It agreed that redaction of the references to the February 2012 letter would be an acceptable solution to address its privilege concerns, and it proposed the redactions it deemed necessary. The Applicant agreed, thus resolving the settlement privilege issue. A copy of the Correspondence in its agreed redacted form appears as an Appendix to these Reasons. The Respondent's relevance-based objections to the Correspondence remain.

B. The Elder Transcripts

[22] The Elder Transcripts contain the testimony of Clifford Tawiyaka and Dennis Thorne before the National Energy Board in hearings that took place in 2007 on three separate proposed projects related to oil and gas. The witnesses are referred to as "Elders" in the transcripts.

[23] Exhibit G to the Affidavit of Chief Rodger Redman submitted by the Applicant contains the testimony of both Elders in a hearing concerning the construction of the TransCanada Keystone Pipeline held on June 14, 2007. Exhibit H is a short portion of a hearing concerning the "Alida to Cromer Capacity Expansion Project" by Enbridge Pipelines on April 12, 2007, and only covers testimony from Elder Tawiyaka. Exhibit I contains the testimony of both Elders on August 21, 2007 in respect of proposed changes to the Enbridge Southern Lights Project.

[24] Each hearing was presided over by a National Energy Board panel of three, and attended by representatives of the applicant companies, First Nations representatives, and personnel from the National Energy Board. The latter two hearings, captured in Exhibits H and I, were also attended by other resource companies and an industry association. The Saskatchewan government was represented at the hearing transcribed in Exhibit H, and a union in the hearing transcribed in Exhibit I. The federal government did not appear at any of the hearings, a fact that was noted by Elder Thorne in his testimony. Nor did any of the other Claimants in the present

proceeding appear before the panel.

[25] It is not clear from the Elder Transcripts exactly what happened in terms of an oath or affirmation of the witnesses. In the first transcript, the National Energy Board accepted that the Elders had been sworn or affirmed in a manner acceptable to the Board, which was by a pipe ceremony (Exhibit G, at paras 9725-27). The other transcript excerpts are silent in this regard. They are also silent as to the origins of the Elders' knowledge, their status in their community, and the methods by which knowledge was retained and passed down to them through generations in their community.

[26] In Exhibit G, the National Energy Board Chairman described the purpose of the hearing as being "to hear from the Elders on the specific impacts the Keystone Project may have on the Standing Buffalo Dakota First Nations" (at para 9717). Mr. Phillips noted that "the First Nation's perspective on impacts has to consider the indigenous world view" (at para 9720), and the Elders' testimony focussed largely on elaborating that world-view. It does not do justice to this world-view to distil it into a few summary lines, but I will attempt to provide an overview while referring to the testimony directly for much of its substance.

[27] Elder Tawiyaka (spelled Tawiyala in the transcripts) testified about the Dakota creation story, describing how the Dakota came into being, and how, from there, the laws binding the Dakota flowed. Key concepts in that law are harmony, having responsibility for and living sustainably with the rest of the earth, and viewing its lands and the earth as sacred. In this way, all activities that affect the Dakota's land also have an impact on the people. A map, which appears to be identical to or at least broadly similar to Exhibit J of the Redman Affidavit, was introduced by another witness and shows the Dakota's purported traditional territory, which stretches from southern Alberta, Saskatchewan and Manitoba down to the middle of the United States, as far as Arkansas and Oklahoma. According to the Elder, the proposed resource development work in this area contaminates and pollutes, violates the Dakota principles of living and the sacredness of the earth, and is something that will ultimately impact all people. "We're desecrating everything…[and] we're going downhill real fast" (Exhibit I, at para 4278, 4282).

[28] Elder Tawiyaka also described the Dakota relationship with the government as one that should be built on mutual respect and equality. He asserted that the Dakota did not sign a treaty

relinquishing its rights, was still a sovereign nation, and that the Crown had a duty to consult with it. He stated, however, that the reality has been very different. He touched upon some of the tragedies of colonial oppression, and described the Dakota's current status as "the lowest on the ladder" (Exhibit H, at para 2297) amongst First Nations because it did not sign a treaty. The Dakota were either sidelined in negotiations or left out, and were forced to accept what treaty First Nations had negotiated; "we more or less…have our hands out all the time and nobody listens…" (Exhibit G, at para 9768). Nonetheless, he thought that the Dakota's relationships with other First Nations were friendly.

[29] Elder Thorne outlined all of the many events and battles in which his people had participated in support of the British and their Canadian successors. He described Standing Buffalo and its people as constant allies. He also contrasted the "linear, compartmentalized and specifically ... narrow" (Exhibit G, at para 9814) world-view of non-indigenous Canada with his holistic and relativistic view that "everything is connected; everything affects each other…" (Exhibit G, at para 9815), and described some of the spiritual practices, legal principles and organizational structures of his people. He criticized the non-indigenous world-view for its greed and the narrow approach it took to understanding the impact of resource extraction, describing it as unsustainable and harmful to all. He warned of the prophecy of an imminent "cleansing" of the earth, which has happened four times in its history, and explained the responsibility he felt to explain the consequences that arise from an approach of "industry at any cost" and the dangers of ignoring Crown obligations to consult with indigenous people (see Exhibit I, at paras 4416, 4422, 4423).

[30] He delved into the history of the Dakota's relations with the colonial Crown, saying that "[w]e have a great history and relationship with the Crown" (Exhibit I, at para 4364), emphasizing the British need for assistance in the wars of the 1700s and early 1800s, their re-affirmation of the two-row wampum that they "would walk parallel, two systems of government" (Exhibit G, at para 9835), and their mutual understanding that they were allies. Once responsibility devolved to the colonies, things changed. He recounted the shameful history of oppression at the hands of the Canadian government in some detail, and the Crown's current neglect of the Dakota. He expressed his belief that the government should be present and should always consult with the Dakota, because "we didn't give up anything" (Exhibit I, at para 4401)

and because the Dakota world-view had much to offer.

[31] Elder Thorne presented his understating of "ally-ship" as follows: "[w]e are a nation of people, just as much as the law of nations in the international law. We are not less than. We are not inferior. We are equal in nationhood" (Exhibit G, at para 9875). He emphasized that the Dakota had not been conquered, and also his desire for dialogue between the two nations and a reconciliation of world-views. He made it clear that he did not believe the Crown was currently living up to its obligations with respect to the Dakota, either its historical obligations or those espoused by the Supreme Court of Canada. He spoke of the differences between the Dakota and other First Nations, with different ways of thinking and understanding their relationship with the Crown, and of the need to be dealt with separately. He also expressed his "sense of territory" (Exhibit G, at para 9860) as vast and transcending current political borders, overlapping with Cree and Blackfoot lands, and requiring further research.

[32] All parties present were offered the opportunity for cross-examination, which was only taken up by board staff and members of the panel in the first two hearings. However, only the beginnings of the cross-examination are included in the excerpts provided by the Applicant.

1. Positions of the Parties

[33] The Applicant seeks to have the Elder Transcripts admitted as an exception to the hearsay rule as evidence of "oral history and traditions" – and not, as became clear in its oral submissions, as prior testimony. The testimony was characterized as important information to the community, which living elders should be able to refer to and use as a documentary record and evidence of the long-standing and pervasive nature of Standing Buffalo's beliefs and disputes with the Crown. For these reasons, the Applicant believes the relevant legal test is that of usefulness, necessity and reliability as laid out in *Tsilhqot'in Nation v British Columbia*, 2004 BCSC 148, 24 BCLR (4th) 296 [*Tsilhqot'in*].

[34] Standing Buffalo submits that the testimony is necessary because Elders Tawiyaka and Thorne are now deceased, though it noted in oral argument that it will also have live witnesses to provide oral history testimony on the Dakota world-view. It submitted that the testimony should be deemed reliable because it was taken in a tribunal setting with opportunity for cross-examination. Furthermore, an assessment of reliability can affect how much weight the ultimate

adjudicator accords the evidence, and thus can be addressed after the Elder Transcripts are admitted.

[35] Standing Buffalo further submits that the Elder Transcripts are relevant because they contain testimony regarding the ally-ship relationship, which is the basis for the Applicant's entitlement to reserve land and its interest in IR 80A. In its Reply, it also argues that the Elder Transcripts are useful in the sense that they provide the Dakota "perspective on the right being claimed", pursuant to *Mitchell v MNR*, 2001 SCC 33, [2001] 1 SCR 911 [*Mitchell*] (Applicant's Reply Written Submissions, at para 13d), although there was no elaboration or discussion of what "right" Standing Buffalo was referring to. It also claims that the testimony on the following topics helps to explain the historical relationship between Standing Buffalo and the Crown: the use of traditional lands, including the lakes in the Qu'Appelle Valley, the non-Treaty relationship, the Seven Council Fires and the misconception of Standing Buffalo as American Sioux.

[36] The Respondent Crown, Kawacatoose First Nation et al and Peepeekisis First Nation submit that the Elder Transcripts are simply not relevant to the present proceedings. They point out that there is no reference to IR 80A in the testimony and no link between the testimony and Standing Buffalo's specific interest in this dispute. The map and discussions of the Applicant's traditional territory was very broad and not at all focussed on the land at issue in these Claims. As the Peepeekisis First Nation states, "the fact that the specific reserve is found within its traditional territory is not, by itself, evidence of an interest in that specific reserve" (Peepeekisis First Nation Response, at para 33).

[37] In the Respondent Crown's view, the allegation of ally-ship does not make the testimony more relevant to Standing Buffalo's entitlement to the specific reserve at issue. As discussed above, the Respondent submits that ally-ship neither existed nor is relevant to these Claims. Kawacatoose First Nation et al submits that it "fail[s] to understand that there is a legal principle of 'allyship' that gives rise to a duty to consult" or any other Crown duty (Kawacatoose Written Submissions, at para 20 and at oral argument). Both Kawacatoose First Nation et al and Peepeekisis First Nation also point out that, to the extent the Applicant relies on Aboriginal rights or title to justify admission, the Tribunal does not have the jurisdiction to consider those

issues per sub-section 15(1)(*f*) of the *SCTA*.

[38] The Respondent Crown further argues that the Elder Transcripts constitute prior testimony offered for its truth and thus must satisfy the test for an exception to hearsay based on prior testimony. The Elder Transcripts fail to do this. The Parties were not substantially the same. The federal Crown was not present at the hearings and did not have the opportunity to cross-examine the witnesses. Further, the material issues discussed in the hearings were completely different than those in the Claims, and any cross-examination would have been on the issue of the pipeline projects being discussed, not IR 80A. Further, the Respondent submits that the testimony is not necessary, as live witnesses will be offered to testify on the same subjects, and is not reliable.

IV. THE LAW

[39] The Parties were not in dispute with respect to the legal principles and tests to be applied regarding settlement privilege and relevance. Because they resolved the settlement privilege question by the redactions evident in the Appendix, it is not necessary to review the law of settlement privilege. The Parties disagreed on the nature of the exception to the hearsay rule that applies to the Elder Transcripts, and how it applies.

A. Relevance

[40] The Parties do not disagree on the basic rule for the admissibility of evidence. Evidence must be relevant to a material fact in issue. Relevance and materiality are the fundamental requirements. This proposition is well summarized in *R v Truscott*, [2006] OJ No 4171 (CA) at para 22, 213 CCC (3d) 183:

> Evidence is relevant if, as a matter of logic and human experience, it renders the existence or absence of a material fact in issue more or less likely:…Evidence will be irrelevant either if it does not make the fact to which it is directed more or less likely, or if the fact to which the evidence is directed is not material to the proceedings.

[41] Moreover, as I observed in *Doig River First Nation and Blueberry River First Nations v Her Majesty the Queen in Right of Canada*, 2015 SCTC 2, at para 20 "the threshold is not a great one". As held by the Supreme Court of Canada in *R v Arp*, [1998] SCJ No 82 at para 38, [1998] 3 SCR 339, there must only be a tendency of relevance and materiality:

> To be logically relevant, an item of evidence does not have to firmly establish, on any standard, the truth or falsity of a fact in issue. The evidence must simply tend to "increase or diminish the probability of the existence of a fact in issue"…As a consequence, there is no minimum probative value required for evidence to be relevant.

[42] The judge assessing relevancy also has a common law residual discretion to exclude the proposed evidence where, in his or her view, its probative value is slight, or undue prejudice might result to the objecting party or to the trial process itself: *R v Hawkins*, [1996] 3 SCR 1043 at 1089, 141 DLR (4th) 193.

[43] Evidence that is otherwise relevant may also be excluded because of the application of an exclusionary rule, such as privilege or hearsay. Settlement privilege was a possible area of exclusion with respect to the Correspondence that the Applicant sought to admit. However, that question having been resolved, the only issue remaining is the relevance of the Correspondence.

[44] Relevance is also a question with respect to the Elder Transcripts. However, considerations relating to hearsay also come into play here.

B. Exceptions to Hearsay

[45] Strictly speaking, prior testimony in transcript form offered into evidence for its truth – as the Elder Transcripts are – is hearsay. Hearsay evidence is generally inadmissible. However, it may be admitted if it can be shown to be both necessary and reliable (*R. v Khan*, [1990] 2 SCR 531 [*Khan*]; *R v Starr*, [2000] 2 SCR 144 [*Starr*]). Necessity may arise where a witness is no longer alive or is otherwise unavailable.

[46] The Parties disagree on the characterization of the Elder Transcripts, and thus also the legal test applicable to their admissibility.

[47] As stated earlier, the Applicant argues that the Elder Transcripts are evidence of oral history and traditions, and thus meet the hearsay exception as laid out in *Tsilhqot'in*. *Tsilhqot'in* involved a claim for Aboriginal rights and title. Vickers J. had heard or received the oral evidence of the Chief and two Elders, the affidavit evidence of eight other Tsilhqot'in persons and one non-aboriginal person, plus the "will-say" of an anthropologist who the Plaintiff planned to call as an expert. The Chief and Elders had provided their oral history evidence, including in

respect of history, genealogy, traditions and practices. The federal Crown objected that this evidence was hearsay because it had been handed down orally by then-deceased Elders and had not been physically recorded. It submitted that there should be a formal process to receive such evidence. The Crown proposed a process similar to that applied to expert evidence, including a *voir dire* or other preliminary hearing, where the proposed witness's qualifications and appropriateness would be considered.

[48] In a carefully considered decision, Justice Vickers reviewed the Supreme Court of Canada decisions where the Court recognized that aboriginal history was kept by long-standing cultural practice through the passing down of oral accounts from one generation to the next. He acknowledged the Court's conclusion that courts must not deny aboriginal peoples access to their history and perspective by imposing an impossible burden of proof. Oral history evidence was admissible through the exercise of flexibility in the application of the usual rules of evidence. It must also be demonstrably useful in the sense of tending to prove a fact relevant to the issues in question. It must also be reasonably necessary and reliable.

[49] In *Mitchell*, McLachlin C.J.C. (writing for the majority of the Court) provided the following guidance:

> 32 Aboriginal oral histories may meet the test of usefulness on two grounds. First, they may offer evidence of ancestral practices and their significance that would not otherwise be available. No other means of obtaining the same evidence may exist, given the absence of contemporaneous records. Second, oral histories may provide the aboriginal perspective on the right claimed. Without such evidence, it might be impossible to gain a true picture of the aboriginal practice relied on or its significance to the society in question. Determining what practices existed, and distinguishing central, defining features of a culture from traits that are marginal or peripheral, is no easy task at a remove of 400 years. Cultural identity is a subjective matter and not easily discerned. [at para 32]

[50] The Chief Justice also stated at paras 27 and 28:

> 27 Aboriginal right claims give rise to unique and inherent evidentiary difficulties. Claimants are called upon to demonstrate features of their pre-contact society, across a gulf of centuries and without the aid of written records. Recognizing these difficulties, this Court has cautioned that the rights protected under s. 35(1) should not be rendered illusory by imposing an impossible burden of proof on those claiming this protection (*R. v. Simon*, [1985] 2 S.C.R. 387 (S.C.C.), at p. 408). Thus in *Van der Peet*, *supra*, the majority of this Court stated that "a court should approach the rules of evidence, and interpret the evidence

> that exists, with a consciousness of the special nature of aboriginal claims, and of the evidentiary difficulties in proving a right which originates in times where there were no written records of the practices, customs and traditions engaged in" (para. 68).
>
> 28 This guideline applies both to the admissibility of evidence and weighing of aboriginal oral history (*Van der Peet, supra; Delgamuukw, supra*, at para. 82).

[51] The traditional rules of evidence were not to be altered, ignored or applied with any less care. Rather it was necessary, on a case-by-case basis, to adapt the rules of evidence to accommodate the admissibility of hearsay evidence relating to aboriginal oral histories. In *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at para 87, 153 DLR (4th) 193, Lamer C.J. wrote for the majority:

> 87 Notwithstanding the challenges created by the use of oral histories as proof of historical facts, the laws of evidence must be adapted in order that this type of evidence can be accommodated and placed on an equal footing with the types of historical evidence that courts are familiar with, which largely consists of historical documents. This is a long-standing practice in the interpretation of treaties between the Crown and aboriginal peoples: Sioui, supra, at p. 1068; R. v. Taylor (1981), 62 C.C.C. (2d) 227 (Ont. C.A.), at p. 232. To quote Dickson C.J., given that most aboriginal societies "did not keep written records", the failure to do so would "impose an impossible burden of proof" on aboriginal peoples, and "render nugatory" any rights that they have (Simon v. The Queen, [1985] 2 S.C.R. 387, at p. 408). This process must be undertaken on a case-by-case basis…

[52] Chief Justice McLachlin also recognized the continued applicability of the traditional rules of evidence, but confirmed that they must be adapted and applied with sensitivity and flexibility. She stated the following:

> 29 Courts render decisions on the basis of evidence. This fundamental principle applies to aboriginal claims as much as to any other claim. *Van der Peet* and *Delgamuukw* affirm the continued applicability of the rules of evidence, while cautioning that these rules must be applied flexibly, in a manner commensurate with the inherent difficulties posed by such claims and the promise of reconciliation embodied in s. 35(1). This flexible application of the rules of evidence permits, for example, the admissibility of evidence of post-contact activities to prove continuity with pre-contact practices, customs and traditions (*Van der Peet, supra*, at para. 62) and the meaningful consideration of various forms of oral history (*Delgamuukw, supra*).
>
> 30 The flexible adaptation of traditional rules of evidence to the challenge of doing justice in aboriginal claims is but an application of the time-honoured principle that the rules of evidence are not "cast in stone, nor are they enacted in a vacuum" (*R. v. Levogiannis*, [1993] 4 S.C.R. 475 (S.C.C.), at p. 487). Rather,

> they are animated by broad, flexible principles, applied purposively to promote truth-finding and fairness. The rules of evidence should facilitate justice, not stand in its way. Underlying the diverse rules on the admissibility of evidence are three simple ideas. First, the evidence must be useful in the sense of tending to prove a fact relevant to the issues in the case. Second, the evidence must be reasonably reliable; unreliable evidence may hinder the search for the truth more than help it. Third, even useful and reasonably reliable evidence may be excluded in the discretion of the trial judge if its probative value is overshadowed by its potential for prejudice.
>
> …
>
> 39 There is a boundary that must not be crossed between a sensitive application and a complete abandonment of the rules of evidence. As Binnie J. observed in the context of treaty rights, "[g]enerous rules of interpretation should not be confused with a vague sense of after-the-fact largesse" (*Marshall v. Canada*, [1999] 3 S.C.R. 456 (S.C.C.), at para. 14). In particular, the Van der *Peet* approach does not operate to amplify the cogency of evidence adduced in support of an aboriginal claim. Evidence advanced in support of aboriginal claims, like the evidence offered in any case, can run the gamut of cogency from the highly compelling to the highly dubious. Claims must still be established on the basis of persuasive evidence demonstrating their validity on the balance of probabilities. Placing "due weight" on the aboriginal perspective, or ensuring its supporting evidence an "equal footing" with more familiar forms of evidence, means precisely what these phrases suggest: *equal* and *due* treatment. While the evidence presented by aboriginal claimants should not be undervalued "simply because that evidence does not conform precisely with the evidentiary standards that would be applied in, for example, a private law torts case" (*Van der Peet, supra*, at para. 68), neither should it be artificially strained to carry more weight than it can reasonably support. If this is an obvious proposition, it must nonetheless be stated. [emphasis in original; *Mitchell*, at paras 29, 30, and 39]

[53] Recognizing the Supreme Court of Canada's approval of the acceptance of aboriginal oral history evidence, the balance of Vickers J.'s decision in *Tsilhqot'in* considered how to adapt the traditional hearsay rules in the particular circumstances of his case. He recognized (at para 16) that no court had set a formal procedure to determine the admissibility of oral history evidence, and he also refused to do so, preferring to treat it in the same way that hearsay evidence would be dealt with in any other case. The threshold test was whether the oral history evidence was useful in the sense of tending to prove a fact relevant to the issues in the case. That test having been satisfied, the hearsay must then pass the twofold test of necessity and reliability before being admitted (*Tsilhqot'in*, at para 17; see also *Khan* and *Starr*).

[54] Necessity depends largely on whether there is a witness who can testify directly on the particular event or circumstances in question. If all direct witnesses are unavailable by virtue of

death, illness, distance or infirmity, necessity will generally have been made out.

[55] Vickers J. also outlined (at para 19) some of the information that the court "would want to know" in order to determine the reliability of oral history evidence:

> 1) some personal information concerning the witnesses circumstances and ability to recount what others have told him or her;
> 2) who it was that told the witness about the event or story;
> 3) the relationship of the witness to the person from whom he or she learned of the event or story;
> 4) the general reputation of the person from whom the witness learned of the event or story;
> 5) whether that person witnessed the event or was simply told of it; and,
> 6) any other matters that might bear on the question of whether the evidence tendered can be relied upon by the trier of fact to make critical findings of fact.

[56] The oral history evidence will be admitted if the court finds it both necessary and reliable. The court must then weigh the evidence in the usual manner, and as usual, it has the discretion to accept the proposed evidence in whole, in part or not at all (*Tsilhqot'in*, at para 20).

[57] Vickers J. then proceeded to direct counsel to provide him with information that he considered essential to the case before him, in particular: how customs and traditions were preserved and safeguarded in the plaintiff's culture; who was entitled to relate information about them; who the witness was and why he was chosen to testify. The court also mandated a preliminary examination of each witnesses' personal ability to recount hearsay evidence, their sources, and any other information relevant to their reliability (at paras 24, 28).

[58] The Respondent does not dispute the criteria laid out in *Tsilhqot'in,* but argues that the Elder Transcripts do not meet them. It submits that the Elder Transcripts are properly characterized as prior testimony offered for its truth. David M Paciocco and Lee Stuesser ("Paciocco and Stuesser") succinctly summarized the applicable legal principles at 138-39 of The *Law of Evidence*, 6th ed (Toronto, Irwin Law Inc, 2011):

> *At common law, evidence given in a prior proceeding by a witness is admissible for its truth in a later proceeding provided*
>
> - *the witness is unavailable;*

- *the parties, or those claiming under them, are substantially the same;*
- *the material issues to which the evidence is relevant are substantially the same; and*
- *the person against whom the evidence is to be used had an opportunity to cross-examine the witness at the earlier proceeding. [emphasis in original]*

[59] The Respondent submits that the Elder Transcripts do not meet at least three of the four requirements for admission, namely that: the parties in the transcribed proceeding and the proceeding to which admission is sought (or those claiming under them) are substantially the same; the material issues to which the evidence is relevant are substantially the same in both proceedings; and the person against whom the evidence is to be used had an opportunity to cross-examine the witness at the earlier proceeding.

V. LEGAL ANALYSIS AND CONCLUSION

A. The Correspondence

[60] The question of settlement privilege was resolved in the course of the hearing, so that question does not need to be dealt with further.

[61] The Correspondence focuses on the Applicant's desire to participate in the proceeding before the Tribunal in respect of its claimed interest in IR 80A and the Crown's opposition or agreement to that participation. I regard the Correspondence as nothing more than ordinary communication between counsel in respect of litigation procedure. There is no evidence to suggest otherwise.

[62] The Applicant already had a claim before the Federal Court bearing on the same matter. Indeed, that claim was apparently underway before the proposed negotiations with the federal government involving other First Nations and to which the Applicant was also invited to participate in February 2012. As the letter of June 19, 2014 demonstrates, the Applicant was willing to participate in the proposed negotiations provided it did not compromise the Federal Court Action. For whatever reason, the negotiations did not proceed and the Federal Court Action continued.

[63] Then in 2013, the Claimants Kawacatoose First Nation et al filed their Declaration of Claim with the Tribunal, thereby spurring the other letters in question. In the letter dated July 23,

2014, the Respondent Crown denied making a request that Standing Buffalo be added as a Party to the present Claims, pointing out that the Tribunal had notified the Applicant pursuant to section 22 of the *SCTA*, advising that a decision on the Claims might significantly affect Standing Buffalo's legal interests. The notice was issued on August 19, 2014. Paragraph 5 of the notice recites that Standing Buffalo, through its counsel, requested that the notice be issued. The Respondent did not initiate its issuance.

[64] In fact, counsel for Standing Buffalo appeared at this proceeding's first Case Management Conference on December 9, 2013 in Regina, Saskatchewan. At that point in time, Standing Buffalo was not a Party, had not made an application to intervene and had not requested issuance of the section 22 notice. As apparent from paragraph 5 of the Endorsement dated December 19, 2013, Standing Buffalo's counsel asserted that his client had a strong interest in the Claims and the lands that were the subject of the Claims, but indicated that the Band was involved in Federal Court Action and by the Rules of the Federal Court and the *SCTA*, it could not participate as a Claimant in both proceedings. Thus Standing Buffalo's counsel reported that his client was attempting to extricate its claim for IR 80A from the Federal Court Action and that it "may seek status as an interven[o]r or party in this proceeding".

[65] There is no evidence that the Respondent invited Standing Buffalo to participate as a party or otherwise in the current proceedings. The final four letters dealt mainly with the sufficiency of the proposed amendment to remove any claim for an interest in IR 80A from the Federal Court Action. The Respondent Crown wanted to be sure that there was no possibility that IR 80A was a component of the Federal Court Action.

[66] Ultimately, the Respondent accepted an amendment to the Federal Court Action and did not oppose Standing Buffalo's participation as a Party to the Tribunal proceeding. The fact of the Respondent's non-opposition to Standing Buffalo's participation as a Party did not amount to an invitation to participate, or to an acceptance that Standing Buffalo had an interest in IR 80A, or to standing in the context of the validity phase of this proceeding. In its Response to Standing Buffalo's Declaration of Claim, the Respondent denied the validity of the First Nation's allegations and claims.

[67] Standing Buffalo's claim in the Federal Court preceded the commencement of

proceedings by the other Claimants with the Tribunal. Standing Buffalo could have continued with the Federal Court Action had it wanted to. That was entirely its prerogative, without influence by the Crown. However, from a practical point of view, it made great sense that Standing Buffalo join the Tribunal proceedings because of the competing claims by the other First Nations. A decision by the Federal Court would not have dealt with the claims of the other First Nations, just as the Tribunal's ultimate decision would not have dealt with Standing Buffalo's claimed interest in IR 80A. There was great potential for conflicting decisions and resulting confusion. For the same reason, the Respondent would obviously prefer to deal with the claims comprehensively, provided the issue was removed from the Federal Court.

[68] None of the letters and related circumstances offer the slightest evidence of the Respondent admitting that Standing Buffalo had standing as one of the aboriginal groups having an interest in IR 80A, or that if it did have standing, its claim was valid. Indeed, that is the contest. The Correspondence focused principally on Standing Buffalo's satisfactory extrication of its claim in respect of IR 80A from consideration by the Federal Court. I can find nothing in the Correspondence that renders the existence of a material fact in issue more or less likely. Nor is there anything in the Correspondence that tends to increase or diminish the probability of the existence of a fact in issue. The Correspondence focuses on procedural matters. I can find nothing of relevance in the Correspondence bearing on the substance of the Claims. For the same reasons the Correspondence did not evidence an agreement by the Respondent that Standing Buffalo had any particular standing or interest in the subject Reserve.

[69] Finally, the fact that the Respondent did not ultimately oppose Standing Buffalo's joining the Tribunal process has nothing to do with Standing Buffalo's claim of "ally-ship". There is no evidence that the Respondent's concession of the First Nation's participation before the Tribunal had anything to do with "ally-ship", and no evidentiary foundation was established to associate the Correspondence with that position. There was no reference to it in the Correspondence, either directly or indirectly. Nor was any other acceptable evidence offered to support that proposition. I conclude that the Respondent's concession was made for practical reasons of seeking comprehensive resolution in an efficient and economical process that would avoid possible conflicting decisions. Standing Buffalo's Claim was made upon its own initiative. The question was not that it would be made, but rather where it would proceed. The communications in the

letters in question were focused on forum, not the substance of the Claims.

[70] In reaching this conclusion, I am in no way pre-judging or making any finding in respect of Standing Buffalo's allegations of "ally-ship" or its bearing on the Claims.

[71] For these reasons, I conclude that the Correspondence is not relevant in any way to the substance of the Claims and is therefore not admissible.

B. The Elder Transcripts

[72] We are dealing with transcripts of testimony given before another tribunal. For purposes of this Application, I am willing to accept that the testimony was given solemnly by some means, although it was not clearly apparent from the transcripts offered. I will also assume that the facts and circumstances to which the witnesses testified were offered for their truth, otherwise there would be no need for a solemn oath. I do not question the sincerity of the witnesses. Otherwise, why would they have taken the time to testify? All this being so, the prior testimony was given at a prior proceeding and is therefore subject to the principles summarized by Paciocco and Stuesser (see paragraph 58 above) as informed by the general principles of necessity and reliability (see *Starr*).

[73] The witnesses are not before the Tribunal. This is a fundamental distinguishing feature from the circumstances in the *Tsilhqot'in* case. In *Tsilhqot'in* the witnesses were present and had testified, or they were affiants or an expert who could have been called upon for oral testimony and cross-examination. That is not possible in the present Claims, which is another reason why the prior testimony principles apply.

[74] The witnesses in the proposed National Energy Board transcripts are not available now because they are deceased; and because of this, an important aspect of the necessity requirement is satisfied, although not completely. The Applicant has indicated that it will be calling oral history evidence from living Elders and presenting an expert anthropologist. It has not been established that these Elders will not be able to testify about the world perspective and alleged ally-ship relationship for which the Applicant proposes to rely on the Elder Transcripts. For that reason, I am not fully satisfied that necessity has been established.

[75] Quite apart from the necessity requirement, however, the material issues under consideration are not substantially the same as between the present Claims and the National Energy Board hearings. Although a formal statement of the purpose of the Elders' testimony before the National Energy Board was not provided, it would appear (and I accept) that they were there to testify to "the specific impacts" of the proposed pipeline projects on the Standing Buffalo Dakota First Nation (Exhibit G, at para 9717). That is very different than the question of the Applicant's (and other First Nations') interest in and entitlement to IR 80A. The requirement that the material issues to which the proposed evidence is relevant be substantially the same is not met. The necessity of this alignment is surely obvious.

[76] Nor are the Parties (or those claiming under them) before the National Energy Board and the Tribunal the same. Neither the Respondent Crown nor the other Claimants before the Tribunal were present or appeared before the National Energy Board. Their interest in the matters presented in testimony of the Elders before the National Energy Board is unknown and they did not have an opportunity to make them known through the presentation of testimony of their own. From that perspective, the testimony is one-sided.

[77] More importantly, while there appears to have been some cross-examination (although the transcripts presented were incomplete), the Respondent Crown and other Claimants in the present proceeding did not have any opportunity to cross-examine the witnesses. The testimony is therefore not only one-sided but is also untested vis-à-vis the interests of the Respondent and other Claimants. From the materials filed on this Application and the oral submissions, it is clear that some of the other Parties question the validity and/or relevance of the Applicant's ally-ship submissions.

[78] Prior testimony offered for its truth by one or more witnesses is hearsay evidence. It must pass the test for prior testimony before being assessed as an exception to the hearsay rule. The Elder Transcripts have not done so.

[79] *Tsilhqot'in* described the Supreme Court of Canada's creation of the exception to the hearsay rule in cases where aboriginal oral history is offered by a First Nation as evidence in support of a claim or other matter of interest. The rationale for the recognition of oral history was summarized in the passages discussed in paragraphs 48 through 51 above. Even conceding that

the testimony offered by the Elders to the National Energy Board was “oral history” in the sense that it reflected this First Nation’s history, perspective and cultural practices passed down from generation to generation by oral means, it would be impossible to assess its reliability by posing the questions for information that Vickers J. suggested that the court “would want to know”, namely:

> 1) some personal information concerning the witnesses circumstances and ability to recount what others have told him or her;
>
> 2) who it was that told the witness about the event or story;
>
> 3) the relationship of the witness to the person from whom he or she learned of the event or story;
>
> 4) the general reputation of the person from whom the witness learned of the event or story;
>
> 5) whether that person witnessed the event or was simply told of it; and,
>
> 6) any other matters that might bear on the question of whether the evidence tendered can be relied upon by the trier of fact to make critical findings of fact. [*Tsilhqot’in*, at para 19]

[80] These questions are addressed one way or another in Tribunal proceedings where oral history is presented, either in the Will-Say statements of the proposed witnesses or by introduction at the hearing prior to the witnesses’ giving their testimony. These matters are also often addressed in oral history protocols that are typically entered into by parties in anticipation of oral history evidence being given. That is not possible here.

[81] The Tribunal is unable to ask the witnesses any of these questions. It must simply assume reliability. This would ignore the traditional rules of evidence that the Supreme Court of Canada has held must still be applied although with flexibility and sensitive adaptativeness.

[82] For these reasons the proposed transcripts of testimony before the National Energy Board are not relevant or otherwise admissible in the present proceedings. Again, this should not be taken as a decision or pronouncement on the question of ally-ship.

VI. ORDER

[83] In summary, leave is granted to Standing Buffalo to bring this Application but for the

reasons given, the Application is denied.

W.L. WHALEN

____
Honourable W.L. Whalen

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20160118

File No.: SCT-5001-13

OTTAWA, ONTARIO January 18, 2016

PRESENT: Honourable W.L. Whalen

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 (Respondents)

and

STAR BLANKET FIRST NATION

Claimant

and

LITTLE BLACK BEAR FIRST NATION

Claimant

and

STANDING BUFFALO DAKOTA FIRST NATION

Claimant (Applicant)

and

PEEPEEKISIS FIRST NATION

Claimant (Respondent)

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

As represented by the Minister of Indian Affairs and Northern Development

Respondent

COUNSEL SHEET

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Department of Justice

APPENDIX

**** The appendix is not available in this format. ****