

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
September 25, 2019	
Isabelle Bourassa	
Ottawa, ON	50

SCT File No.: SCT - 7006 -13

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

TOOSEY INDIAN BAND

Claimant

v.

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

Respondent

JOINT APPLICATION FOR STAY OF PROCEEDINGS

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The Toosey Indian Band (the “Claimant”) and Canada (the “Respondent”) (collectively, the “Parties”) submit the following joint application for a stay of proceedings in respect of the Forestry Access Road Specific Claim (the “Claim”) pursuant to the direction of the Specific Claims Tribunal (the “Tribunal”) dated September 11, 2019 and Practice Direction #15:

I. Agreement to enter into negotiations

1. By letter dated March 25, 2019 the Claimant advised the Respondent that it was prepared to enter into negotiations to narrow or resolve issues in the Claim.
2. By letter dated August 7, 2019 the Respondent advised the Claimant that it was prepared to enter into negotiations on a without-prejudice basis to resolve issues in the Claim.
3. By letter dated September 18, 2019 the Claimant provided the Respondent with written confirmation and a Band Council Resolution confirming its intention to enter into negotiations to resolve issues in the Claim.

II. Summary of progress to date towards a negotiated resolution of the Claim

4. The Parties have commissioned and exchanged the following expert reports in respect of the Claim:
 - a. *Expert Report (Geotechnical)*, December 6, 2017. Prepared on behalf of the Respondent by Eric McQuarrie, McQuarrie Geotechnical Consultants Ltd.
 - b. *Appraisal - Toosey Forestry Access Road Specific Claim Toosey IR#1 and IR #1A Riske Creek, British Columbia*, December 14, 2017. Prepared on behalf of the Claimant by Rod Cook, Kent-MacPherson.
 - c. *Retrospective Appraisal of the Partial Taking of Toosey IR1 & IR1A1 Vicinity of Riske Creek, BC & Review of December 14, 2017 Kent MacPherson Appraisal Report*, September 10, 2018. Prepared on behalf of the Respondent by John Peebles, Land Ethic Consulting.
 - d. *Analysis & Valuation of Disturbance - Partial Taking of Toosey IR1 & IR1A1, Vicinity of Riske Creek, BC*, January 15, 2019. Prepared on behalf of the Respondent by John Peebles, Land Ethic Consulting.

5. As negotiations have not yet commenced, no without-prejudice settlement offers have been made or responded to by the Parties, nor has a memorandum on the terms of settlement between negotiators been achieved.
6. The Parties have not yet resolved the issues arising in the Claim. However, the Parties believe the expert evidentiary record will significantly assist the parties in narrowing the outstanding issues, and that the primary focus of this negotiation will be on the quantum of compensation.
7. The Parties have not yet used mediation.

III. Summary of the measures planned to advance the negotiations during the period for the proposed stay

8. In the event that the stay of proceedings is granted, the Parties intend to develop a work plan setting out measures, including a schedule of meeting dates, to advance negotiations during the period of the stay.
9. The Parties anticipate that the following activities will take place during the period of the proposed stay:
 - a. the Claimant will apply for funding to support its participation in negotiations for the resolution of the Claim;
 - b. the Respondent will assign a negotiator and table lawyer to the file;
 - c. the Parties will develop a negotiation protocol to guide negotiations between the Parties;
 - d. the Parties will develop a schedule of meeting dates for late 2019/early 2020, and a preliminary agenda of topics to be addressed at those meetings;
 - e. the Parties will work towards achieving a negotiated resolution of the Claim, including by participating in in-person meetings and conference calls as necessary to advance the negotiations, with a view to narrowing or resolving issues regarding the Parties' respective expert appraisals and valuation of compensation.

10. The Parties are prepared to provide the Tribunal with a work plan for negotiations, once finalized.
11. The Parties do not anticipate commissioning any further expert reports.
12. As negotiations have not yet commenced, no dates for presentation of offers and counter-offers have been set.
13. The Parties' position is that a decision on whether to attempt mediation by the Tribunal should be made after the Parties have had an opportunity to achieve a negotiated resolution to the Claim.

IV. Order sought

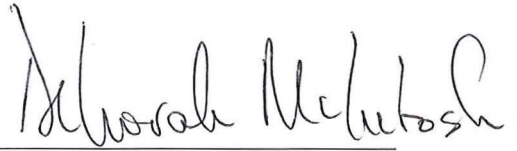
14. The Parties respectfully request that the Tribunal issue an order staying the proceedings for the Claim for a period of six months, subject to the Claim continuing to be case-managed by the Tribunal and the stay being renewed at the end of the six-month period on the consent of the Parties and pursuant to the direction of the Tribunal.
15. The Parties will be prepared to speak to this joint application at the next case management conference to be convened for this Claim.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

September 26, 2019



Kate Gunn
FIRST PEOPLES LAW CORPORATION
#502-55 East Cordova Street
Vancouver, BC V6A 0A5
Email: kgunn@firstpeopleslaw.com
Solicitor for the Claimant



Deborah McIntosh
Department of Justice Canada
British Columbia Regional Office
900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Email: deborah.mcintosh@justice.gc.ca
Solicitor for the Respondent