

Court File No. **A-449-14**

FEDERAL COURT OF APPEAL

SPECIFIC CLAIMS TRIBUNAL  
TRIBUNAL DES REVENDICATIONS  
PARTICULIÈRES

October 8, 2014

RECEIVED / REÇU  
OTTAWA, ON

BETWEEN:

**LAC LA RONGE BAND and  
MONTREAL LAKE CREE NATION,**

**Applicants,**

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Respondent.**

APPLICATION UNDER: Section 28 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

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**NOTICE OF APPLICATION**

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**ROBERT A. WATCHMAN/KAREN R. POETKER**  
(File No. 45970/2)

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TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 363 Broadway, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

October 6, 2014

**OCT 06 2014**

Issued by:

**ORIGINAL SIGNED BY  
ROBERT M'VONDO  
REGISTRY OFFICER**

(Registry Officer)

4th floor, 363 Broadway,  
Winnipeg, MB R3C 3N9

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
c/o The Registry, Federal Court of Appeal  
4th floor, 363 Broadway,  
Winnipeg, MB R3C 3N9

AND TO: Specific Claims Tribunal  
c/o Registry of the Specific Claims Tribunal of Canada  
400-427 Laurier Ave W  
Box 31  
Ottawa (Ontario) K1R 7Y2

AND TO: Attorney General of Canada  
Department of Justice, Prairie Region  
10<sup>th</sup> Flr., 123 - 2<sup>nd</sup> Avenue S.  
Saskatoon, SK S7K 7E6

## APPLICATION

- 1) This is an Application for judicial review in respect of the decision of the Specific Claims Tribunal (the "**Tribunal**") (2014 SCTC 8) dated and first communicated to the parties on September 5, 2014 (the "**Decision**") relating to a specific claim, File No. SCT-5002-11 (the "**Claim**"), made by the Applicants pursuant to Treaty Number 6 (the "**Treaty**") in relation to the unlawful harvesting of timber.
  
- 2) The Applicants make Application for an Order:
  - a) quashing and setting aside the Tribunal's determination that the timber on the Applicants' Reserve had been properly surrendered to the Respondent or that any surrender had been properly accepted;
  
  - b) quashing and setting aside the Tribunal's determination that penalty provisions under the *Indian Act*, RSC 1886, c. 43 (the "**Indian Act**") and the *Regulations for the Sale of Timber on Indian Lands in Ontario and Quebec*, P.C. 1788, as extended to the entire country by Order-in-Council 1457, April 28, 1896 (the "**ITRs**"), for unlawful harvesting of timber, were not the basis for compensable damage or losses under the *Specific Claims Tribunal Act*, SC 2008, c. 22 (the "**SCT Act**");
  
  - c) quashing and setting aside the Tribunal's determination that penalty provisions under the Indian Act and ITRs were merely discretionary "revenue-producing" tools available to the Respondent to enforce compliance with licensing requirements and that the Respondent's failure to pursue the penalty provisions did not constitute a breach of the Respondent's fiduciary duty to the Applicants;
  
  - d) quashing and setting aside the Tribunal's determination that there was no proven loss as a result of unlawful trespass;
  
  - e) requiring that a different member of the Tribunal adjudicate the second phase of the Hearing (as defined below) relating to compensation for the Respondent's liability for both the improper surrender and unlawful

trespass issues, without regard to any prior determinations by the Tribunal concerning compensation;

- f) costs of the within Application; and
- g) such further and other Order as counsel may advise and this Honourable Court may permit.

3) The Grounds for the Application are:

- a) The Applicants are First Nations within the meaning of section 2(a) of the SCT Act and are located in the Province of Saskatchewan. The Applicants are parties to the Treaty which was signed in 1876. In 2003, the Applicants jointly submitted a specific claim in respect of the harvesting of timber on Little Red Reserve 106A (the "**Reserve**"). The hearing of the Claim (the "**Hearing**"), by agreement, was bifurcated into two phases: (1) validity of the Claim as to the trespass issue, liability for the improper surrender issue having already been agreed to by the parties, and (2) compensation;
- b) On November 26-27, 2013, the first phase of the Hearing was conducted before the Tribunal in respect of the question of liability for the trespass issue only;
- c) On September 5, 2014, the Tribunal issued its Decision which concluded that the Claim of unlawful trespass was valid and that the Crown was liable for breaching its fiduciary duty to the Applicants by failing to prevent unlicensed harvesting of timber on the Reserve and failing to enforce the provisions of the Indian Act with respect to timber harvested. However, the Tribunal went beyond the scope of the first phase of the Hearing by determining that the timber had been properly surrendered and accepted by the Respondent and made predeterminations compromising the Applicants' entitlement to compensation;
- d) The Tribunal erred and exceeded its jurisdiction by wrongly deciding that the timber had been properly surrendered and accepted, thereby

compromising the Applicants' entitlement to compensation under this heading;

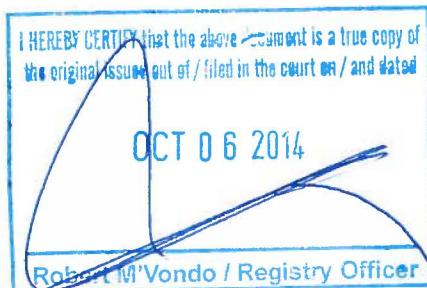
- e) The Tribunal erred and exceeded its jurisdiction by wrongly deciding that penalty enforcement provisions under the Indian Act and ITRs, for unlawful harvesting of timber, were not the basis for compensable damage or losses under the SCT Act, thereby compromising the Applicants' entitlement to compensation under this heading;
- f) The Tribunal erred and exceeded its jurisdiction by wrongly deciding that penalty provisions under the Indian Act and ITRs were merely discretionary "revenue-producing" tools available to the Respondent to enforce compliance with licensing requirements and that the Respondent's failure to pursue the penalty provisions did not constitute a breach of the Respondent's fiduciary duty to the Applicants, thereby compromising the Applicants' entitlement to compensation under this heading;
- g) The Tribunal erred and exceeded its jurisdiction by determining that there was no proven loss as a result of the unlawful trespass, thereby compromising the Applicants' entitlement to compensation under this heading;
- h) The Tribunal erred and exceeded its jurisdiction by prejudging the issue of compensation which was to be the subject matter of the second phase of the bifurcated Hearing;
- i) The Tribunal breached its duty of impartiality by prejudging the issue of compensation which was to be the subject matter of the second phase of the bifurcated Hearing thereby giving rise to a reasonable apprehension of bias;
- j) The *Indian Act*, RSC 1886, c. 43, Sections 2, 21-26, 38, 39, 54-68;
- k) The *Specific Claims Tribunal Act*, SC 2008, c. 22; Sections 2(1), 14(1),

16(1), 18, 20 and 34(1); and the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119;

- l) *Federal Courts Act*, R.S.C. 1985, c. F-7, Sections 18.1 and 28; and the Federal Courts Rules, SOR/98-106; and
  - m) Such further and other grounds as counsel may advise and this Honourable Court may permit.
- 4) The Application will be supported by the following material:
- a) The Record of proceedings before the Specific Claims Tribunal;
  - b) The Decision; and
  - c) The affidavit of David Knoll, to be filed.
- 5) The Applicants request the Specific Claims Tribunal to send a certified copy of the following material, that is not in the possession of the Applicants but is in the possession of the Specific Claims Tribunal, to the Applicants and to the Registry:

The Record of materials before the Specific Claims Tribunal in File No. SCT-5002-11, including, but not limited to, all notes and documents relating to the Decision.

DATE: October 6, 2014



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