

Victoria

07-Mar-18

REGISTRY

No. 180247
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEST MOBERLY FIRST NATIONS, and ROLAND WILLSON ON HIS OWN
BEHALF AND ON BEHALF OF ALL OTHER WEST MOBERLY FIRST NATIONS
BENEFICIARIES OF TREATY NO. 8

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA, THE ATTORNEY GENERAL OF CANADA, and
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

DEFENDANTS

**APPLICATION RESPONSE OF
THE ATTORNEY GENERAL OF CANADA**

Application response of: the defendant, the Attorney General of Canada (“Canada”)

THIS IS A RESPONSE TO the Notice of Application of the defendant, British Columbia Hydro and Power Authority (“BC Hydro”) filed February 28, 2018.

Part 1: ORDER CONSENTED TO

Canada consents to the granting of the orders set out in Part 1, paragraph 1 of the Notice of Application.

Part 2: ORDERS OPPOSED

Canada does not oppose any of the orders sought in the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

Canada takes no position on the granting of the orders set out in Part 1, paragraphs 2 and 3 of the Notice of Application.

Part 4: FACTUAL BASIS

1. Canada agrees that the further and better particulars sought by BC Hydro will be of assistance for delineating the precise nature of the claim, which will limit the claim and help to frame the issues for trial. For this reason Canada does not oppose BC Hydro's application.
2. Canada agrees to the factual background set out in BC Hydro's application, under the heading "Chronology of Proceedings to Date".

Part 5: LEGAL BASIS

3. The applicable Rules are Rule 3-7(22) and (23) of the *Supreme Court Civil Rules*.
4. The purpose of particulars are to: inform the other side of the case to be met; prevent the other side from being taken by surprise at trial, enable the other side to know what evidence they ought to be prepared with and to prepare for trial, limit the generality of the pleadings; limit and decide the issues to be tried, and tie the hands of the party so that he cannot go into new matters without leave.

Cansulex v. Perry, [1982] B.C.J. No. 369 (C.A.), at para. 15

5. The primary issue in this litigation is whether the cumulative impact of the W.A.C. Bennett, Peace Canyon and Site C dams infringe the Plaintiffs' constitutionally protected treaty rights under Treaty 8. To respond fully to the claim at trial, it is necessary to understand the scope and nature of the treaty rights and obligations alleged, and the way in which they are said to have been infringed.
6. The plaintiff have pleaded their interpretation of certain rights and obligations owed under Treaty 8 in a general way, but without addressing whether other rights and obligations are relied upon and without providing specific details of their traditional territory and the manner in which their rights were traditionally practiced. They have also failed to provide detailed particulars as to how they say their treaty rights have been infringed.

7. Canada does not require particulars to provide its Response to the Notice of Civil Claim, but takes the position that the further and better particulars sought by BC Hydro will delineate the precise nature of the claim by limiting the generality of the pleadings and will help to frame the issues for trial. For these reasons, Canada does not oppose BC Hydro's application and requests that the order for further and better particulars be granted.

PART 6: MATERIAL TO BE RELIED ON

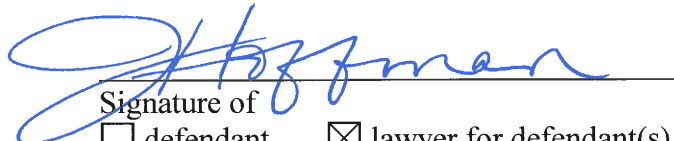
1. The pleadings and other material filed herein;
2. Such further and other material as counsel may advise and this Honourable Court shall permit.

Canada estimates that the application will take a ½ day.

Canada has filed in this proceeding a document that contains Canada's address for service.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: March 8, 2018


Signature of
 defendant lawyer for defendant(s)

ATTORNEY GENERAL OF CANADA

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Solicitor/counsel for the Defendant,
the Attorney General of Canada

THIS APPLICATION RESPONSE is prepared and served by the Attorney General of Canada whose place of business and address for service is the Department of Justice Canada, British Columbia Regional Office, 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9, Telephone: (604) 775-7421, Facsimile: (604) 775-7557, Attention: Judith Hoffman.