

IN THE MATTER OF:

Manitoba Hydro's Request for a Final Licence under the Manitoba *Water Power Act*

AFFIDAVIT of ANDREW STOBO SNIDERMAN

I, Andrew Stobo Sniderman of Toronto, Ontario, hereby SWEAR:

1. I am currently an articling student with the law firm of Olthuis, Kleer, Townshend LLP ("OKT"), which is counsel to Pimicikamak/Cross Lake First Nation.
2. I am assisting Jeremiah Raining Bird and Kate Kempton in their representation of Pimicikamak before the Clean Environment Commission in the public hearings with respect to Manitoba Hydro's request for a final licence under the *Water Power Act*, and as such, I have personal knowledge of the facts and matters set out herein, except where stated to be based on information and belief. Where so stated, I verily believe such information to be true.
3. In order to determine the list of publicly available awards made with respect to Northern Flood Agreement arbitration claims, I went to the website of the Office of the Arbitrator of the Northern Flood Agreement (the "Arbitrator's website"). On March 7, 2015, I searched the "Awards of the arbitrator" portion of the website and summarized the awards that are related to Pimicikamak and/or Cross Lake First Nation.
4. The Arbitrator's website only includes decisions for which an award has been made, meaning that the list is not a complete list of every claim involving Pimicikamak/Cross Lake.
5. Further, this list only reflects claims made on behalf of Cross Lake as a whole and does not include numerous claims made on behalf of individual members of Pimicikamak/Cross Lake.

Past Awards

6. A summary of arbitrator awards is attached as **Exhibit A**. The summary omits awards that related to procedural matters like costs, rates for counsel, production of documents and admissibility of hearsay.

Active Claims

7. I am advised by Cathy Guirguis, an associate with my firm, that OKT has carriage of a number of active NFA arbitration claims on behalf of Pimicikamak/Cross Lake. A summary of active claims that our firm has in carriage is attached as **Exhibit B**.

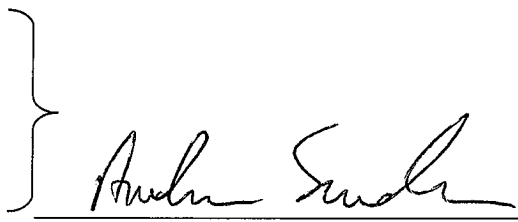
8. I make this affidavit in support of Pimicikamak's intervention before the Clean Environment Commission Hearings with respect to Manitoba Hydro's request for a final licence under the *Water Power Act* and for no improper purpose.

SWORN before me at Toronto,
Ontario, on the 31st day of March,
2015



A Commissioner, etc.

02533H



ANDREW STOBO SNIDERMAN

The Following is Exhibit "A"
to the Affidavit of Andrew Stobo Sniderman, Sworn March 31, 2015

**HISTORIC NFA ARBITRATION CLAIMS INVOLVING CROSS LAKE FIRST
NATION**

The following is a brief summary of awards by the arbitrator under the Northern Flood Agreement (NFA) related to the following claims: 1, 3, 4, 11, 12, 18, 20, 22, 23, 24, 28, 34A, 37, 38B, 43, 99, 109, 110, 133B, 159, 164, 165, and 183A. I have omitted those awards that related to procedural matters like costs, rates for counsel, production of documents and admissibility of hearsay.

CLAIM 1

Cross Lake Indian Band v Manitoba et al, Claim 1, November 27, 1980 (Ferg)

Claim 1 was brought to require Manitoba to make a final determination of the area of easement lands in reserve 19D, so that Cross Lake could receive lands and compensation. The issue before the arbitrator was whether the status of the lands in 19 D was arbitratable. He ruled that it was.

CLAIM 3

Northern Flood Committee Inc. v Manitoba et al, Claim 3, October 7, 1981 (Ferg)

Claim 3 was brought to require that Hydro pay interest as damages because it unreasonably withheld payment. The arbitrator ordered that Hydro pay this interest (\$124, 294.32).

CLAIM 4

Northern Flood Committee Inc. v Manitoba et al, Claim 4, October 7, 1981 (Ferg)

Claim 4 was brought to require Canada to pay interest claimed as damages because Canada unreasonably withheld payments. The arbitrator ordered that Canada pay some interest for a portion of the claim (\$2273.97).

CLAIM 11

Cross Lake Indian Band v Manitoba et al, Claim 11, November 12, 1982 (Ferg)

Claim 11 was about whether there have been adverse effects on recreation and recreational resources on Cross Lake and whether these effects were caused by the Hydro project. The arbitrator found that the Hydro Project “very adversely” the residents of Cross Lake.

Cross Lake First Nation v Manitoba et al, Claim 11, February 7, 2000 (MacLean)

This award related to the administration of the capital fund to finance the Cross Lake Arena. The arbitrator ordered that:

- \$9,113,800.00 be paid to Cross Lake First Nation (CLFN);
- CLFN send annual accounts to Manitoba Hydro and Manitoba;
- Manitoba Hydro provide the costs of providing electricity to the arena;
- The parties review the adequacy of the capital amount annually to ensure that reasonable costs can be met.

CLAIM 12

Cross Lake Indian Band v Manitoba et al, Claims 1, 11 & 12, June 30, 1981 (Ferg)

Claim 12 is about alleged mercury contamination as a result of the Hydro project. The arbitrator ordered costs for the claim to proceed to final determination after a full hearing on the merits.

CLAIM 20

Cross Lake Indian Band v Manitoba Hydro, Claim 20, October 20, 1982 (MacLean)

The arbitrator ordered that Hydro must pass along information in its possession that related to the possibility of adverse effects on the claimants. This obligation relates to the interpretation of sections 9.1 and 9.2 the Northern Flood Agreement re: consultation. The arbitrator also ordered that a specific report be produced.

CLAIM 22

Cross Lake Indian Band et al v Manitoba et al, Claim 22, July 7, 1994 (MacLean)

This application concerns a review of a Settlement Agreement. The arbitrator held that Article 24.11 does not provide the arbitrator the power to review settlements.

CLAIM 23

Cross Lake Indian Band et al v Manitoba et al, Claim 23, August 11, 1982 (Ferg)

The issue here concerns the Northern Flood Committee Inc. claiming costs as a representative party and on its own behalf as a party. Under the NFA, particularly the status of the Northern Flood Committee as its own party. In this claim, the arbitrator ruled that only one counsel be paid by the claimants to collectively prepare in advance the claim, but the arbitrator declined to lay down a general rule.

CLAIM 28

Cross Lake Indian Band et al v Manitoba et al, Claim 28, September 6, 1983 (Ferg)

This claim concerns obligations of Canada, Manitoba and Manitoba Hydro to provide core funding for the Northern Flood Committee. The arbitrator held that the claimants are entitled “to be recompensed for their expenses incurred the ongoing and necessary for efforts to obtain the benefits provided for in the Agreement.”

CLAIM 34A

Cross Lake First Nation v Manitoba Hydro, Claim 34A, August 3, 2006

This claim concerns obligations by Manitoba and Manitoba Hydro to provide employment to NFC members. Cross Lake First Nation sought to sever its own claim with respect to Jenpeg Dam and Generating Station. The arbitrator held that the onus on the claimant seeking to sever had not yet been met.

CLAIM 37

Cross Lake Indian Band v Manitoba et al, Claim 37, February 10, 1984 (Ferg)

Canada challenged the apportionment of its liability on a previous order. Application was dismissed.

CLAIM 109

Cross Lake Indian Band et al v Canada et al, Claim 109, December 16, 1993 (MacLean)

The issue was whether a road qualified as an “all weather road” to meet the NFA requirement. The arbitrator concluded that the road in question connecting Cross Lake and Jenpeg did not meet this standard.

Cross Lake Indian Band v Canada et al, Claim 109, October 3, 1994 (MacLean),

The arbitrator ordered that Canada and Manitoba to make a report available with respect to Recommendation 25 (re: construction of an all weather road) the Lake Winnipeg, Churchill and Nelson River's Study Board.

CLAIM 110

The arbitrator ordered best efforts to negotiate an interim domestic fishing program.

CLAIM 159

Cross Lake Indian Band et al v Canada et al, Claim 159, August 11, 1993 (MacLean)

Claim 159 alleges that a 1988 Agreement re: potable water was materially breached by Canada and is no longer in effect. The arbitrator found that Canada improperly delayed proceedings against Hydro, but Canada was not in default of the agreement. The arbitrator held that the claimant should be compensated for the costs of the delay, and any outstanding payments owed under Article 6.1 the 1988 agreement should be paid with interest.

Cross Lake Indian Band et al v Canada et al, Claim 159, September 30, 1993 (MacLean)

The arbitrator ruled that outstanding payments under article 6.1 of the 1988 agreement must be paid immediately with interests.

CLAIM 183

This claim is about debris cleanup and a boat accident that caused a death. The arbitrator found that the Hydro Project caused the accident and attributed liability for damages. Furthermore, the arbitrator recommended that "Hydro take steps to remove the debris that has accumulated along

the shores of the forebay and to take such other reasonable steps as may be necessary to minimize the danger presented by debris in the forebay.”

The Following is Exhibit "B"
to the Affidavit of Andrew Stobo Sniderman, Sworn March 31, 2015

ACTIVE NFA ARBITRATION CLAIMS INVOLVING CROSS LAKE

CLAIM 43

Claim 43 is about Manitoba's delay in or the failure to transfer land parcels selected by Cross Lake First Nation per Article 3 of the NFA. There is a costs order for this file, and no points of defence have been filed.

CLAIM 34A

Claim 34A was filed against Manitoba Hydro, Manitoba and Canada, with respect to obligations under the NFA to provide employment. The claim alleges that the parties failed in their obligations to provide such opportunities to members of Pimicikamak/Cross Lake First Nation. There is a costs order for this file, and it is my understanding that only Canada has filed points of defence. An order from a previous Arbitrator in 2006 suggested that the claim be approached in two steps: 1) a hearing about interpreting the scope of the terms about providing employment, e.g. whether it attaches to the Project as a whole; and 2) a hearing then into the quantum of lost employment.

CLAIM 131

Claim 131 is about interference in navigable waters, and alleges the failure of Manitoba Hydro, Manitoba and Canada to comply with the NFA to ensure minimal interference in navigation and to meet other NFA obligations such as providing maps. There is a costs order for this claim, and to our knowledge, no points of defence have been filed in this claim.

CLAIM 164

Claim 164 alleges adverse effects on social, physical, psychological, spiritual and cultural (collectively “health”) on Pimicikamak, Cross Lake First Nation and their members due to the construction and operation of the Project, and also due to the failure of Manitoba Hydro, Manitoba and Canada to meet specific obligations regarding mitigation, resource management and provision of programs and funds. The original points of claim was filed in 1992, and I understand that an amended points of claim was filed in 2008.

CLAIM 183

Claim 183 is about the clean-up of debris in the fore bay as is required under the NFA. It began as a claim in 1995 about the death of two individuals because they hit debris that was not cleared while boating. The Arbitrator made an order with respect to Manitoba Hydro cleaning up debris, and Pimicikamak and Cross Lake First Nation are now seeking an order that Manitoba Hydro has not sufficiently acted on that recommendation, via supplementary points of claim that were filed in 2007. There is a costs order in place with respect to legal fees.

CLAIM 11

Claim 11 was about losses to recreation and recreational resources. A decision was made by the Arbitrator in 1982 finding Manitoba Hydro, Manitoba and Canada liable for damages claimed by Cross Lake First Nation respecting recreation. The order did not speak to compensation of those damages, but a later order was made against Manitoba and Manitoba Hydro to construct an indoor arena complex and also establishing a trust fund for its maintenance.

CLAIMS 646 AND 647

Claims 646 and 647 have been filed on behalf of Daryl Settee respecting damages to his snowmobile and his outboard motor, claiming against Manitoba Hydro.

CLAIM 109

Claim 109 was decided by the Arbitrator in orders from 1993 and 1997. The Arbitrator at those times found that Canada and Manitoba were obligated per the NFA to build an all-weather road to Cross Lake. At the time of the decision, no such road existed and members of Pimicikamak and Cross Lake First Nation had to rely on ferry service. The Arbitrator ordered Canada and Manitoba to compensate for benefits foregone due to the all-weather road not being built shortly after the NFA was executed – that is, the social and economic value of lost opportunity and benefits due to the lack of an all-weather road. A workplan for an economist (retained by Cross Lake and Pimicikamak) as agreed to by all parties in 1999. Subsequently, there has been substantial dispute over the interpretation of undertakings to disclose amendments to the workplan versus disclosure of the expert's work in progress, and also about compliance with the costs order in place.

CLAIM 648

Claim 648 was recently brought and alleges that Manitoba Hydro failed to meet its duty under Article 9.2 to consult with Pimicikamak in a meaningful and bona fide manner with respect to the Keeyask Project.