

Court File No. T-153-13

**FEDERAL COURT**

BETWEEN:

HUPACASATH FIRST NATION

Applicant

And

THE MINISTER OF FOREIGN AFFAIRS CANADA and  
THE ATTORNEY GENERAL OF CANADA

Respondents

**AFFIDAVIT #2 OF VERNON MACKAY**

I, Vernon MacKay, public servant, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY THAT:

1. I am employed by the Department of Foreign Affairs and International Trade (DFAIT) as Acting Director of the Investment Trade Policy Division within DFAIT and as such have personal knowledge of the matters hereinafter deposed to by me, except where same are stated to be based on information and belief and where so stated I verily believe them to be true.
2. I have read the Notice of Application and the affidavits filed in support of the Notice of Application. I swear this affidavit in support of the position of the Government of Canada in this litigation.

3. The Investment Trade Policy Division (the “Division”) is responsible for negotiating Foreign Investment Promotion and Protection Agreements (FIPAs), as well as the investment chapters of Free Trade Agreements (FTAs). My Division also has the policy lead for the defence of investor-state claims brought pursuant to FIPAs and FTAs, including NAFTA Chapter Eleven. I have been with the division since 1998, and was the lead negotiator for the Canada-China FIPA from 2009 to the conclusion of negotiations in 2012. I have also been the lead negotiator for Canada-Korea FTA Investment Chapter negotiations, Canada-Central America FTA Investment Chapter negotiations, Canada-Vietnam FIPA negotiations, and Canada-Indonesia FIPA negotiations.

4. On January 26, 2013, I caused members of my Division, Heather Bystryk, Vivasvat Dadwal, Sylvie Lalancette, Lucas McCall, Steve Neves, Luis Piedmont, and Mark Shelford to perform searches on DFAIT’s internal correspondence database system, CCM Mercury, for correspondence received from any First Nation and/or Aboriginal group requesting consultations on any Foreign Investment Promotion and Protection Agreement (“FIPA”). Correspondence received by DFAIT between September 6, 1985 and October 1, 2012 were searched electronically using the following search criteria: “Foreign Investment Promotion and Protection Agreement” “FIPA”, “Consultations” “First Nations” and “Aboriginal”.

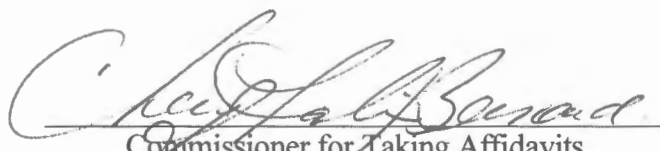
5. The electronic search did not yield any relevant documents.

6. On January 26, 2013, I caused members of my Division, Heather Bystryk, Vivasvat Dadwal, Sylvie Lalancette, Lucas McCall, Steve Neves, Luis Piedmont, and Mark Shelford to perform a manual search of DFAIT’s paper archives for documents, including correspondence,

within the "Investment Outside of Canada." My Division searched for correspondence received from any First Nation and/or Aboriginal group requesting consultations on any FIPA between the dates of May 1994 (paper versions of received correspondence prior to 1994 are held by Library and Archives Canada and were not searched) and April 2008. We did not conduct a manual search after April 2008 as we moved from paper to electronic information management.

7. The manual search did not yield any relevant documents.

SWORN before me at the City of Ottawa  
in the Province of Ontario on this 14<sup>th</sup>  
day of March, 2013.

  
Commissioner for Taking Affidavits  
within Ontario

  
Vernon Mackay

**Cheryl Fabian-Bernard, a Commissioner, etc.,  
Province of Ontario, for the Government of  
Canada, Department of Foreign Affairs and  
International Trade.  
Expires September 2, 2015.**