FILE NO.: SCT-5001-11
CITATION: 2012 SCTC 1
DATE: 2010607

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:	
BEARDY'S AND OKEMASIS BAND #96 AND #97 Claimant	Ron S. Maurice and Steve Carey, for the Claimant
– and –	
HER MAJESTY THE QUEEN IN RIGHT OF CANADA As represented by the Minister of Indian Affairs and Northern Development Respondent	Daniel J. Kuhlen and David J. Smith, for the Respondent

REASONS FOR DECISION

Honourable Justice Slade

ON THE APPLICATION for intervention of the Première Nation des Atikamekw D'Opiticiwan on the hearing of the Crown Application to Strike the claim.

I. BACKGROUND

[1] The claim of the Beardy's and Okemasis Band #96 and #97 was filed on July 11, 2011. The Crown's response was filed August 19, 2011.

[2] The events at the core of the claim are not in issue. The Crown entered into Treaty 6 with the Plains and Wood Cree and other Tribes of Indians in 1876. Treaty 6 provided the Indians with various promises and benefits, including the promise to "pay each Indian person the sum of $5 per head yearly".

[3] The central issue raised in the claim is whether the Crown breached a lawful obligation by withholding annuity payments from members of the Beardy's Band, and members of the Okemasis Band, for several years following the March 1885 Declaration by Louis Riel of a provisional government, a pivotal moment in the event known as the North-West Rebellion.

[4] On July 26, 2011 the Crown gave a notice of its intention to apply pursuant to section 17 (a) of the *Specific Claims Tribunal Act*, for an order that the claim be struck out in whole. At a Case Management Conference convened on October 21, 2011, counsel for the parties filed a joint proposal which provided, among other things, for the following

i. Canada agrees to make best efforts to file and serve its Application to Strike, if necessary, by January 27, 2012; and,

ii. The Band agrees to make best efforts to provide it Response to Canada's application by February 24, 2012.

[5] Hearing arrangements were discussed at a Case Management Conference on February 15, 2012. On February 23, 2012 a Notice of Hearing of the Crown Application to Strike was set down for three days, commencing June 11, 2012.

[6] The Crown Application to Strike, together with a Memorandum of Law and Argument, was filed on May 15, 2012. Due to the late filing of the application, the claimant's response submissions have not yet been filed.

[7] The Application for Leave to Intervene was filed on May 25, 2012.

[8] The responses of the Crown and Claimant to the Application to Strike for Leave to Intervene were filed on June 1, 2012. Both parties opposed the Application for Leave to Intervene.

II. THE PROPOSED INTERVENTION

[9] The focus of the applicant's submission is on issues that arise in the Crown's Application to Strike and Memorandum of Law and Argument filed May 15, 2012. This is necessarily the case as the Claimant's response submissions have not, for the reason set out above, been filed.

[10] The premise of the Crown Application to Strike is that section 14 (1) of the *Specific Claims Tribunal Act* does not provide for the filing with the Tribunal of claims based on a failure to pay treaty annuities, as such annuities are "individual entitlements" (Crown Memorandum of Law and Argument, para. 12 to 16). The Crown, in its Memorandum, argues that this claim comes within section 17 (a) of the *Specific Claims Tribunal Act* which empowers the Tribunal to order a claim struck on the ground that it "is, on its face, not admissible under section 14 ...".

[11] The proposed intervenor says, in paragraph 9 of the application, that it intends to present legal arguments that address the potential impacts that the Tribunal's decision on the Crown's Application to Strike may have on other claims before the Tribunal that pertain to other assets that the Crown may argue are "individual assets" as opposed to assets of the First Nation. The arguments it wishes to advance on this point will relate to the use of subsections 17 (a) and 14 (1) of the *Act* as a basis to make applications to strike.

[12] The interest of the proposed intervenor in the issue on the Crown Application to Strike reflects the fact that it has filed several claims with the Tribunal, and has experience in advancing claims presented to the Minister of Indian Affairs and Northern Development, as provided for in the Federal Specific Claims Policy. (Section 16 (1) of the Specific Claims Tribunal Act provides that "A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister..."). It is this policy that the Crown relies on in para. 38 and 39 of its Memorandum as a basis for construction of the *Act*.

[13] The proposed intervenor asserts that its arguments will assist the Tribunal in determining whether Parliament had the intention, enacting section 14 (1) of the *Specific Claims Tribunal*

Act, " ... to limit the Tribunal's jurisdiction to losses stemming from assets held in common by a First Nation. As a francophone First Nation, the Première Nation des Atikamekw d'Opitciwan will provide insight on the significance of the difference between the French and English versions of subsection 14 (1) of the *Act*."

[14] The applicant submits at para. 12 of its application, that "While the undersigned attorneys have not had the advantage of having read the Claimants (Respondent)'s Response to the Application to Strike, no substantial arguments have been raised by any of the Parties thus far regarding the interpretation of subsection 14(1) of the *Act* and whether this subsection limits the Tribunal's jurisdiction to losses stemming from assets held in common by a First Nation."

III. ANALYSIS

[15] Section 22 (1) of the *Act* provides as follows:

> **22.** (1) If the Tribunal's decision of an issue in relation to a specific claim might, in its opinion, significantly affect the interests of a province, First Nation or person, the Tribunal shall so notify them. The parties may make submissions to the Tribunal as to whose interests might be affected.

The *Specific Claims Tribunal Act* lacks any definition of the "interests" that would warrant the provision of notice under section 22 (1).

Section 25 (1) of the *Specific Claims Tribunal Act* provides as follows:

> **25.** (1) A First Nation or person to whom notice under subsection 22 (1) is provided may, with leave of the Tribunal, intervene before it, to make representations relevant to the proceedings <u>in respect of any matter that affects the First Nation or person</u>. (Emphasis added).
>
> The language of section 25 (1) confers a broad discretion on the Tribunal to permit intervention.

[16] Applications for intervention in proceedings before courts may be allowed based on the inherent jurisdiction of the court (*Canadian Labour Congress v. Bindi* (1985), 17 D.L.R. (4^{th}) 193 (B.C.C.A.), para. 19). Principles governing the exercise of the jurisdiction of the court to grant intervenor status are of some assistance toward a determination whether, in a particular case, to grant intervenor status. I refer to the following extract from *EGALE Canada Inc. v. Canada (Attorney General)*, 2002 BCCA 396

> [7] Generally speaking, before an applicant will be allowed to intervene, the court should consider whether the applicant has a direct interest in the litigation or whether the applicant can make a valuable contribution or bring a different perspective to a consideration of the issues that differs from those of the parties. When an application for intervention is made on a public law issue, the application may be allowed even though the applicant does not have a direct interest in the appeal.

[17] A similar statement is found in *R. v. Watson*, 2006 BCCA 234:

> 3] … [I]t is clear that where the applicant does not have a 'direct' interest in the litigation, the court must consider the nature of the issue before the court (particularly whether it is a 'public' law issue); whether the case has a dimension that legitimately engages the interests of the would-be intervenor; the representativeness of the applicant of a particular point of view or 'perspective' that may be of assistance to the court; and whether that viewpoint will assist the court in the resolution of the issues or whether, as noted in *Ward v. Clark*, the proposed intervenor is likely to 'take the litigation away from those directly affected by it.' ...

[18] The proposed intervenor does not assert a direct interest in the matter at issue on the Application to Strike. Its asserted interest is in the potential impact of the Tribunal's decision on other claims before the Tribunal that pertain to other assets that the Crown may contend are "individual assets" (Application for Leave to Intervene, para. 9). Although the application does not describe assets in which the intervenor may assert an interest that might be so characterised, it is apparent that it considers such interests to fall within the purview of the *Specific Claims Tribunal Act.* Its submissions will be directed to the construction of subsection 14 (1) of the *Specific Claims Tribunal Act* and its application in relation to assets, other than treaty annuities, that may be characterised as individual. This, in my opinion, would satisfy the "interests" requirement of section 25 (1) of the *Specific Claims Tribunal Act*. The construction of section 14 (1) is a "matter that affects the First Nation". The common law requirement that the case have a dimension that legitimately engages the interests of the proposed intervenor is met.

[19] An interest in a proceeding that will give rise to a precedent that will affect proceedings to which an applicant for intervention is directly a party has been described by the Supreme Court of Canada as a "precedent-based interest". This interest, alone, will not ordinary satisfy the "interest" test for intervention. (*Re Workers' Compensation Act, 1983* (*Nfld.*), [1989] 2 S.C.R. 335).

[20] The interest of the proposed intervenor is not in the outcome of a decision of the Tribunal on whether treaty claims of a failure to pay treaty annuities are within the jurisdiction of the Tribunal. Its interest is in the broader question whether any interest that may be individual in nature, but dependent on association with a First Nation, may be beyond the Tribunal's jurisdiction. Its perspective on the matter at hand may be informative towards a determination of the scope of section 14 (1) where claims that assert individual interests in assets are dependent upon membership in a First Nation.

[21] I find that the proposed intervenor has met the test for intervention in that it will advance a perspective that may be of assistance to the Tribunal in its determination in the Crown Application to Strike.

[22] Accordingly, **IT IS ORDERED**:

1. The applicant is granted leave to intervene. It may, not later than June 11, 2012, file a Memorandum of Fact and Law, not exceeding 20 pages, addressing the issues set out in part VI of the application.

2. The hearing date of June 12, 2012, will not be delayed.

3. The parties have leave to address any consequential further proceedings, including the filing of material responsive to that filed by the intervener, when the application to strike comes on for hearing.

HARRY SLADE

Honourable Harry Slade
Chairperson, Specific Claims Tribunal

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20120607

File No.: SCT-5001-11

OTTAWA, ONTARIO June 7, 2012

PRESENT: Honourable Harry Slade

BETWEEN:

BEARDY'S AND OKEMASIS BAND #96 AND #97

Claimant

and

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

Respondent

COUNSEL SHEET

TO:	**Counsel for the Claimant BEARDY'S AND OKEMASIS BAND #96 AND #97** As represented by Ron S. Maurice and Steve Carey
AND TO:	**Counsel for the Respondent** As represented by Daniel J. Kuhlen and David J. Smith