

**FILE NO.:** SCT-5001-11  
**CITATION:** 2012 SCTC 2  
**DATE:** 20120607

**SPECIFIC CLAIMS TRIBUNAL**  
**TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

**BETWEEN:**

BEARDY'S AND OKEMASIS BAND #96  
AND #97

Claimant

Ron S. Maurice, 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

– and –

PREMIÈRE NATION DES ATIKAMEKW  
D'OPITCIWAN

Intervenor

Francis Walsh, for the Intervenor

**REASONS FOR DECISION**

**Honourable Justice Slade**

CROWN APPLICATION for leave and application for adjournment of hearing of application to strike.

## **I. THE PRESENT APPLICATION**

[1] The Crown has filed an application today, June 7, 2012, seeking an adjournment of the Crown's Application to Strike set for June 12, 2012.

## **II. GROUNDS**

[2] These are the grounds asserted by the Crown:

1. The Procedural fairness requires that the Crown be given adequate time to review and respond to the materials of Beardy's & Okemasis Band #96 and #97 ("BOFN") and the Premiere Nation des Atikamekw d'Opitciwan ("PNAO").
2. BOFN and PNAO, however, have been granted leave to file their materials in the Crown's Application to Strike on June 11, 2012, one day before the hearing.
3. The Crown will suffer significant prejudice if it is required to proceed with its Application to Strike on June 12, 2012.
4. The interests of neither BOFN nor PNAO will suffer any prejudice as a result of a reasonable adjournment.

The Claimant and intervenor have not consented to this application.

## **III. ANALYSIS AND DISPOSITION**

### **Claimant (Respondent) Filing Date, June 11, 2012**

[3] 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 its Response to Canada's application by February 24, 2012.

[4] 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.

[5] 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.

[6] My direction for a filing date of not later than June 11, 2012 for the Claimant (Respondent) submissions on the Application to Strike is entirely due to the inordinate delay in the Crown's filing of its Formal Application to Strike and Memorandum of Law and Fact. The Crown cannot rely on its own inaction to assert prejudice in these circumstances.

**A. Filing of Intervenor's Submissions, Not Later than June 11, 2012**

[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.

[9] The following direction was communicated, orally, to the Crown and Claimant on Monday June 4, 2012:

- i. 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.
- ii. The hearing date of June 12, 2012, will not be delayed.
- iii. The parties have leave to address any consequential further proceedings, including the filing of material responsive to that filed by the intervenor, when the Application to Strike comes on for hearing.

[10] This direction, communicated, orally, is set out in my Reasons for Decision and formal Order, dated June 7, 2012.

[11] Any potential prejudice to the Crown that may arise as a consequence of the filing by June 11, 2012 of the Claimant (Respondent) submission in response to the Memorandum of Law and Argument in support of the Application to Strike, and the filing of the Memorandum of Fact and Law of the intervenor, will be addressed in the course of the hearing of the Application to Strike scheduled to commence June 12, 2012. Firm dates will be set for the filing of any written reply of the Crown to the Claimant (Respondent) submissions, if permitted, and the Crown response to the intervenor's Memorandum of Fact and Law.

[12] Leave to apply is granted. The Application for Adjournment is dismissed.

HARRY SLADE

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Honourable Harry Slade  
Chairperson, Specific Claims Tribunal

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**OTTAWA, ONTARIO June 7, 2012**

**PRESENT: Honourable Justice 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**

**and**

**PREMIÈRE NATION DES ATIKAMEKW D'OPTICIWAN**

**Intervenor**

**COUNSEL SHEET**

**TO: Counsel for the Claimant BEARDY'S & OKEMASIS BAND #96 AND #97  
As represented by Ron S. Maurice  
Maurice Law Barristers and Solicitors**

**AND TO:**           **Counsel for the Respondent**  
As represented by Daniel J. Kuhlen and David J. Smith  
Department of Justice

**AND TO:**           **Counsel for the Intervenor PREMIÈRE NATION DES ATIKAMEKW  
D'OPITCIWAN**  
As represented by Francis Walsh  
Dionne Schulze s.e.n.c.