FILE NO.: SCT-7007-11
CITATION: 2012 SCTC 7
DATE: 20121130

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:	
DOIG RIVER FIRST NATION Claimant	Allisun Rana and Julie Tannahill, for the Claimant
– and –	
BLUEBERRY RIVER FIRST NATIONS Applicant	James Tate and Ava Murphy, for the Applicant
– and –	
HER MAJESTY THE QUEEN IN RIGHT OF CANADA As represented by the Minister of Indian Affairs and Northern Development Respondent	Brett C. Marleau and Naomi Wright, for the Respondent
	HEARD: October 4, 2012

REASONS FOR DECISION

SMITH, J.

THE FACTUAL BACKGROUND

[1] In 1977 the Fort St. John Beaver Band was divided into two, creating the Doig River First Nation (**"DRFN"**) and the Blueberry River First Nations (**"BRFN"**).

[2] DRFN has filed a specific claim with the Tribunal which stems from events that occurred prior to this division. The Claimant asserts that Canada breached its legal obligations to it when, after the Fort St. John Beaver Band surrendered the Montney reserve in 1945, the Crown failed to provide mineral rights in the three new reserves (Blueberry River, Doig River and Beaton River) that were purchased with the proceeds.

[3] DRFN presently occupies the Doig River reserve and the north half of the Beaton River reserve, while BRFN occupies the south half of the Beaton River reserve and the Blueberry River reserve.

[4] DRFN's specific claim was filed in 1999 by the Treaty 8 Tribal Association. The Treaty 8 Tribal Association filed an identical claim in 2002 for BRFN, who later withdrew their claim in February, 2008, before the *Specific Claims Tribunal Act*[1] ("the ***Act***") came into force.

[5] DRFN's Declaration of Claim "seeks compensation for the loss of the mineral rights in the Replacement Reserves,"[2] which include BRFN's reserves. The Tribunal notified BRFN, under section 22 of the *Act*, that a decision on DRFN's mineral rights may significantly affect the legal interests of BRFN. BRFN then applied to be added as a claimant on DRFN's claim. The Crown opposes the application and submits that BRFN be added as a respondent.

THE ISSUE

[6] Does the Specific Claims Tribunal (the "**Tribunal**") have the authority to add as a claimant a First Nation that has not filed a claim with the Tribunal and does not meet the statutory requirements to do so?

BRIEF ANSWER

[7] Section 24 of the *Act* should be interpreted broadly to allow the addition of a claimant or

[1] *Specific Claims Tribunal Act*, SC 2008, c. 22.
[2] DRFN, Declaration of Claim, Dec. 15, 2011, para 46.

a respondent to an existing claim in circumstances where it is reasonable and appropriate to do so.

[8] BRFN and DRFN have similar, if not identical, claims dating back to when they were the Fort St. John Beaver Band and before they became separate entities.

[9] Claimant status is the only status that would enable full, final and effective adjudication of all the issues without delay, inconvenience or the expense of separate proceedings.

[10] There is no prejudice to the Respondent or any valid reason not to add BRFN as a claimant.

DISCUSSION

Relevant Provisions of the *Act* and *Rules of Practice and Procedure*

[11] The *Act* provides two methods by which a First Nation may become a party. The first is by filing a claim under sections 14-16. The second is via section 24 after notice has been given by the Tribunal under section 22 in circumstances where a First Nation's interests may be affected by proceedings before the Tribunal.

[12] A First Nation or a person who has received a section 22 notice may, with leave of the Tribunal, make representations in respect of any matter that affects the First Nation or person. BRFN received a section 22 notice and made submissions to the Tribunal that it should be added as a party claimant.

[13] Section 24 of the *Act* provides:

> *The Tribunal may, on application by a First Nation to whom notice under subsection 22(1) is provided, grant the First Nation party status if the Tribunal considers it a necessary or proper party.*[3]

[14] In section 2 of the *Act* the word "party" is defined to mean "any claimant, the Crown or any province or First Nation added as a party under section 23 or 24".

[15] Section 13(1) of the *Act* accords members of the Tribunal "all the powers, rights and

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[3] *Specific Claims Tribunal Act*, p. 24.

privileges that are vested in a superior court of record with respect to "matters necessary or proper for the due exercise of its jurisdiction".

[16] The *Specific Claims Tribunal Rules of Practice and Procedure*[4] directs the Tribunal to use the *Federal Courts Rules*[5] by analogy for matters not otherwise addressed in its *Rules*.

CASE LAW SUPPORTS A BROAD INTERPRETATION

[17] Superior courts have generally adopted a generous approach when interpreting their own rules in deciding when it is appropriate to add a party to a proceeding. While this Tribunal is not bound by this jurisprudence, a review of the principles engaged is instructive from a policy perspective.

[18] Wedge, J., in *Ipsos S.A. v Reid* described the analysis as follows:

> *The court's discretion to add or substitute parties under Rule 15(5)(a) should be exercised generously to allow the effective determination of the issues, without delay, inconvenience or separate trials. Unless the allegations are frivolous, the parties should be added....*[6]

[19] Similarly, in *Robson Bulldozing Ltd. v Royal Bank of Canada*, McLachlin, J. (as she then was), stated:

> *The power conferred upon the court to join a party is discretionary, to be exercised upon the proper evidence being produced.... The discretion should be generously exercised so as to enable effective adjudication upon all matters in dispute without delay, inconvenience and expense of separate actions and trials.*[7]

[20] In *CIBA Corp. and American Cyanamid Co. v Decorite IGAV (Canada) Ltd*., Walsh, J., also commented:

> *"Generally speaking, the adding of parties is permitted especially when the party to be added as a plaintiff consents... and, in fact, it is desirable that any party whose rights would be affected by the judgment should be joined."*[8]

[21] In *Sawridge Band v Canada*, Hugessen, J., stated:

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[4] SOR/2011-119, r 5 [*Rules*].
[5] SOR/98-106.
[6] *Ipsos S.A. v Reid*, 2005 BCSC 1114 at para 107 [*Ipsos*].
[7] *Robson Bulldozing Ltd. v Royal Bank of Canada* (1985), 62 BCLR 267 at 270 (SC).
[8] *CIBA Corp. and American Cyanamid Co. v Decorite IGAV (Canada) Ltd.* (1971), 2 CPR (2d) 124 at 126 (FCTD).

> *"The Federal Court Rules 1998 are very liberal in their treatment of joinder of parties and causes of action and they are intended to be untechnical and to facilitate the just resolution of actions in the most expeditious, efficient and least costly manner."*[9]

[22] A generous approach to the interpretation of an administrative tribunal's statutory authority to add a party is also consistent with the principles of natural justice. In *Ontario New Home Warranty Program v Ontario (Commercial Registration Appeal Tribunal)*, Howden, J., found that the Commercial Registration Appeals Tribunal erred when it took a narrow view of its jurisdiction to add a party. The tribunal hearing the case had found that it had no jurisdiction to add contractors and subcontractors as parties. Howden, J. found other reasons not to add the applicants as parties; however, on the issue of jurisdiction he concluded that the phrase "such other persons as the Tribunal may specify" should be interpreted broadly and that it granted a court authority to add a party to a proceeding where required by the principles of natural justice:

> *It is unnecessary to go beyond the section for this purpose. However, I do note s. 5.3 of the Statutory Powers Procedures Act [RSO 1990, c S.22] which states that, unless otherwise specified under a particular act, parties "shall be persons entitled by law to be parties to the proceeding." It has been held that "there is a genuinely entrenched principle of administrative law that where natural justice requires it, notice and an opportunity to respond must be given to persons who might be prejudiced by acts done under legislative authority notwithstanding that the legislation does not require it."*[10]

WHAT IS A "NECESSARY AND PROPER" PARTY?

[23] A "necessary and proper" party is one that must be added to enable the effective and complete adjudication of the matter.[11] As explained by Borins, D.C.J., in *Morandan Investments v Spohn*:

> *'The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that*

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[9] *Sawridge Band v Canada* (1999), 164 FTR 95 at para 9 [*Sawridge*], aff'd (2001), 283 NR 112 (FCA).
[10] *Ontario New Home Warranty Program v Ontario* (*Commercial Registration Appeal Tribunal*) (1998), 39 OR (3d) 119 at 125 (Ont Ct J (Gen Div)), citing *MacCosham Van Lines (Canada) Co. v Ontario (Minister of Transportation & Communications)* (1988), 66 OR (2d) 198 (Ont HCJ (Div Ct)) at 211.
[11] For example: *Morandan Investments Ltd. v Spohn* (1987), 58 OR (2d) 621 at 624-625 (Ont Dist Ct) [*Morandan Investments*]; *Warner-Lambert Canada Inc. v Canada (Minister of Health)* (2001), 193 FTR 117 at para 12 (FCTD), aff'd 270 NR 34 at para 5 and 10 (FCA); *Kitimat (District) v British Columbia (Minister of Energy and Mines)* 2006 BCCA 562.

> *there may be a complete decree, which shall bind them all…. (Story's Eq. Plds. sec. 72)'*[12]

[24] This principle has been integrated into the rules of court in many jurisdictions. For example, Federal Court Rule 104(1)(b) provides that a court may:

> … order that a person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined be added as a party.[13]

[25] A party is most necessary where the person's participation is required for the person to be bound by the result. As explained by Evans, J.A., for the Federal Court of Appeal:

> *What makes a person a necessary party? It is not, of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately. ... The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party.*[14]

WHEN SHOULD A PARTY BE ADDED TO A PROCEEDING?

[26] If adding a party would cause "undue delay or complication or would prejudice a party," then separate proceedings may remain appropriate.[15] In *Ipsos S.A. v Reid*, Wedge, J., applied a two step analysis:

> *(a) Is there a question or issue between the parties relating to the relief, remedy or subject matter of the litigation?*
> *(b) Will the adding of the proposed defendants be just and convenient to determine the issues in the litigation in question?*[16]

[27] Adding a party is in the discretion of a court and a tribunal requiring a balance of all relevant factors. Lambert, J.A., in *Tri-Line Expressways v Ansari,* emphasized that no single

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[12] *Morandan Investments, supra* note 10 at 624.
[13] *Federal Court Rules, supra* note 4.
[14] *Shubenacadie v Canada (Minister of Fisheries and Oceans*), 2002 FCA 509 at para 8, citing: *Amon v Raphael Tuck & Sons Ltd*., [1956] 1 QB 357 at 380.
[15] *Sawridge, supra* note 8 at para 10-11. Hugessen, J., concluded: "while there are common issues of law and fact in this matter, by far the more important and burdensome issues will be separate."
[16] *Ipsos, supra* note 5 at para 8.

factor is determinative.[17]

[28] The fact that an applicant has delayed coming forward, or even lacks a separate cause of action due to limitation, does not foreclose the possibility of adding them as a party.[18] This is particularly so where there is no prejudice to the defendant and the defendant has had full notice.[19] The discretion to add a party must be exercised in a manner that truly serves the interests of justice in all of the circumstances.

ANALYSIS

[29] The interpretation of section 24 should be consistent with the overall purpose and scheme of the *Act*, which h is designed to facilitate the just, expeditious and final resolution of specific claims.[20]

[30] The Crown submits that the legislature only intended section 24 of the *Act* to allow for the adding a party respondent and not a party claimant.

[31] A narrow and restrictive interpretation of the word "party" runs contrary to the specific wording of section 24. Had the legislature wanted to restrict the definition of the word "party" to mean party respondent it could have said so.

[32] A First Nation receiving a notice pursuant to section 22 without having filed a pre-existing claim would, if limited to the role of a party respondent, have limited ability to have their complete legal interests addressed, necessitating further proceedings for the remainder of their claim – a result that is clearly contrary to a reading of section 22 and the general scheme and intent of the *Act*.

[33] The narrow interpretation of section 24 advocated by the Crown restricts the potential for streamlining the resolution of claims and could cause an unnecessary delay, expense and multiplicity of proceedings. A narrow interpretation also risks causing prejudice to unrepresented

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[17] *Tri-Line Expressways v Ansari* (1997), 30 BCLR (3d) 222 at para 12 (CA).
[18] *Ibid* at para 12-14.
[19] *Ibid* at para 18.
[20] *Act*, preamble, s 34 (decisions of the Tribunal are final and conclusive, subject to judicial review), s 35 (release and indemnity after a decision); *Rules*, r 4 ("The Tribunal may make any order that is necessary to secure the just, timely or cost-effective resolution of the specific claim").

potential claimants. A more generous approach to the interpretation of section 24 encourages the final and complete resolution of claims, and is therefore most consistent with the purpose of sections 22, 24 and the intention of the legislation. A generous approach is also consistent with principles set out in the case law referred to above.

[34] Section 24 is intended to provide a mechanism for the Tribunal to add an entirely new claimant, add a claimant from a separate claim, or add a respondent, as is appropriate in the circumstances for the efficient and cost effective conduct of hearings and resolution of specific claims.

[35] Only claimant status can yield a final and complete resolution in the circumstances of this claim. When the alleged breaches of fiduciary duty arose, DRFN and BRFN existed as one entity - the Fort St. John Beaver Band, and the reserves in issue were held, undivided, by that band. This unique fact situation means that the subject matter with respect to the issue of liability is not merely analogous but identical.

[36] The relief sought by DRFN includes compensation related to BRFN's present reserves. The Crown asserts that this is a drafting error that should be remedied. If DRFN claims this relief as descendants of the Fort St. John Beaver Band, then BRFN is directly interested in the outcome and further proceedings would ensue if BRFN was not permitted to become a claimant. If DRFN were required to amend its claim to exclude BRFN's reserves, then further proceedings would also likely ensue by BRFN seeking a similar remedy to that which DRFN seeks for its reserves. Either way, a final and complete resolution of the claim would not occur.

[37] In considering whether BRFN is a "necessary and proper" claimant, there is no evidence that any form of prejudice would result to the Crown. The issues of liability and compensation are unchanged.[21]

DECISION

[38] The interests of justice, the purpose of section 24 and the overall scheme and intent of the *Act* are best served by adding BRFN as a claimant.

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[21] Written Submissions of the Applicant, Sept. 19, 2012, para 20.

[39] Nothing less than claimant status will allow for the final and complete determination of the issues in a cost effective and expeditious fashion.

[40] Applying the two-step analysis set out in *Ipsos S.A. v Reid*: there is a common question or issue between the parties and, adding BRFN will result in the just, cost effective and expeditious adjudication of all issues in the claim.

[41] I order that BRFN be added to the claim in this proceeding as a party claimant.

[42] BRFN shall file a Declaration of Claim within 20 days and thereafter the Respondent shall have 20 days to file a Response.

[43] The Registrar is directed to schedule a Case Management Conference with all parties once filings are complete.

PATRICK SMITH

Justice Patrick Smith
Specific Claims Tribunal of Canada

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20121130

File No.: SCT-7007-11

OTTAWA, ONTARIO November 30, 2012

PRESENT: Justice Patrick Smith

BETWEEN:

DOIG RIVER FIRST NATION

Claimant

and

BLUEBERRY RIVER FIRST NATIONS

Applicant

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 DOIG RIVER FIRST NATION**
As represented by Allisun Rana and Julie Tannahill
Rana Law, Barristers & Solicitors

AND TO: **Counsel for the Applicant BLUEBERRY RIVER FIRST NATIONS**
As represented by James Tate and Ava Murphy
Ratcliff & Company LLP

AND TO: **Counsel for the Respondent**
As represented by Brett C. Marleau and Naomi Wright
Department of Justice