FILE NO.: SCT-7007-13
CITATION: 2024 SCTC 4
DATE: 20240611

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:	
ʔAQ̓AM Claimant (Respondent)	Oliver C. Hanson and Andrea Piercy, for the Claimant (Respondent)
– and –	
HIS MAJESTY THE KING IN RIGHT OF CANADA As represented by the Minister of Crown-Indigenous Relations Respondent (Respondent)	James Mackenzie and Shane Hopkins-Utter, for the Respondent (Respondent)
– and –	
ʔAKISQ̓NUK FIRST NATION Applicant	Sonia Eggerman and Laura Schaan, for the Applicant
	HEARD: April 3 and 4, 2024

REASONS ON APPLICATION

Honourable Victoria Chiappetta, Chairperson

NOTE: This document is subject to editorial revision before its reproduction in final form.

Cases Cited:

Doig River First Nation v Her Majesty the Queen in Right of Canada, 2013 SCTC 7; *Metlakatla Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 4; *Cook's Ferry Indian Band v His Majesty the King in Right of Canada*, 2023 SCTC 2; *Birch Narrows First Nation v Her Majesty the Queen in Right of Canada*, 2018 SCTC 8; *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, [2018] 1 SCR 83; *Jensen v Samsung Electronics Co Ltd*, 2021 FC 1185; *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 153 DLR (4th) 193; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511; *Beardy's & Okemasis Band #96 and #97 v Her Majesty the Queen in Right of Canada*, 2016 SCTC 15.

Statutes and Regulations Cited:

Sp*ecific Claims Tribunal Act*, SC 2008, c 22, preamble, ss 8, 13, 16, 20, 22, 24.

Specific Claims Tribunal Rules of Practice and Procedure, SOR/2011-119, r 44.

Federal Courts Rules, SOR 98/106, r 334.

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I. OVERVIEW

[1] The Applicant, the ʔakisq̓nuk First Nation (ʔakisq̓nuk), makes this Application to be granted party status in the specific claim filed with the Specific Claims Tribunal (the Tribunal) on January 29, 2014 (the Claim) by ʔaq̓am (the Claimant).

[2] The Applicant submits that it has a direct interest in both the subject matter of the Claim and the relief and remedy sought by the Claimant. According to the Applicant, both ʔaq̓am and ʔakisq̓nuk historically used and occupied the lands at issue in the Claim and therefore both First Nations have a legal claim against the Respondent for failing to prevent the pre-emptions of the lands at issue.

[3] The Respondent, His Majesty the King in Right of Canada (Canada or the Crown), as represented by the Minister of Crown-Indigenous Relations, supports the Application. Canada submits that adding ʔakisq̓nuk to the Claim is a neutral procedural matter that would not determine Canada's liability to ʔakisq̓nuk. It would, however, allow ʔakisq̓nuk to file a Declaration of Claim with the Tribunal and, if the claim was found to be valid by agreement or upon a hearing on the merits, ʔakisq̓nuk would be entitled to a share of any compensation awarded with respect to the Claim.

[4] The Claimant opposes the Application. ʔaq̓am submits, in part, that the Applicant has not established that there is a common question or issue between the Applicant and the Claimant relating to the relief, remedy or subject matter of the Claim. The Claimant asks that the Application be dismissed.

[5] In my view, the Application is properly dismissed, based on a number of relevant factors. No one factor is determinative. As will be more particularly set out below, the factors relevant to the exercise of my discretion are as follows:

1. The Claimant opposes the Application.

2. The Claim was filed with the Tribunal more than eight years prior to the filing of the Application.

3. The Application was filed almost seven years after a notice pursuant to section 22 of the *Specific Claims Tribunal Act*, SC 2008, c 22 [*SCTA*] was provided to the Applicant.

4. The Applicant has not filed evidence sufficient to demonstrate that the delay was reasonable.

5. Liability was established on April 18, 2019, almost three years prior to the filing of the Application.

6. The Claim was stayed by Order dated April 18, 2019, to allow the Parties to negotiate an agreeable award of compensation. The Parties have been working to that end since the date of the Order to stay the proceeding.

7. The addition of the Applicant as a party will cause delay, while the Applicant files a Declaration of Claim and works to prove liability. It took five years for the Claimant to satisfy Canada of the validity of its own Claim. This required the preparation and exchange of thousands of documents, numerous historical expert reports, days of witness interviews and six days of a validity hearing.

8. The Applicant has asserted that the Claim as pleaded supports that there is a question or issue between it and the Claimant relating to the relief, remedy or subject matter of the Claim but has not provided the Tribunal with sufficient particulars to support that assertion. The Tribunal is without any particulars relating to the Applicant's historic use and occupation of the lands at any time prior to pre-emption, despite the fact that, in December 2022, the Applicant was provided with all of the documents that the Claimant and the Respondent exchanged further to the Claim.

9. It remains open to the Applicant to file its own specific claim with the Minister of Crown-Indigenous Relations (the Minister).

10. If, upon acceptance of the specific claim for negotiation, Canada takes the position that ʔakisq̓nuk 's specific claim is based on the same or substantially the same facts

and relates to the same assets as the Claim currently before the Tribunal, Canada can consent in writing to the filing of the claim with the Tribunal and the Applicant or Canada may make an application in accordance with subsection 8(2) of the *SCTA* to determine if the two claims are subject to one claim limit. This determination is presently premature and outside the scope of the Application.

II. ISSUES

[6] The issues for determination by the Tribunal in this Application, as set out in the Agreed Statement of Issues, are as follows:

THRESHOLD ISSUE

1. Is the question of ʔ[a]kisq̓nuk's cognizable interest relevant to its application to become a party pursuant to s. 24 of the [*SCTA*];

    a. If so, is it necessary for ʔ[a]kisq̓nuk to lead evidence of cognizable interest?

    b. If evidence is necessary, what is the standard of proof?

ISSUES ON THE APPLICATION TO ADD ʔAKISQ̓NUK AS A PARTY

1. Is ʔ[a]kisq̓nuk a necessary or proper party pursuant to s. 24 of the [*SCTA*];

    a. **Sub-Issue No. 1:** Is there a question or issue between the [Applicant and the Claimant] relating to the relief, remedy or subject matter of the Claim?

    b. **Sub-Issue No. 2:** Is the joinder of ʔ[a]kisq̓nuk just and convenient to determine the issues in the Claim and consistent with the just, expeditious and final resolution of the specific claims of both ʔaq̓am and ʔ[a]kisq̓nuk?

    c. **Sub-Issue No. 3:** Will adding ʔ[a]kisq̓nuk as a party to the Claim serve the interests of justice in all of the circumstances?

    d. **Sub-Issue No. 4:**Can ʔ[a]kisq̓nuk become a party pursuant to s. 24 of the [*SCTA*] given that Canada admitted the validity of the Claim by ʔaq̓am?

2. Did ʔ[a]kisq̓nuk take all reasonable efforts to make the application to be added as a party in a timely manner?

III. PROCEDURAL HISTORY

[7] Both the Claimant and the Applicant are members of the Ktunaxa Nation. The Ktunaxa

Nation is made up of four First Nations: ʔakisq̓nuk (formerly known as Columbia Lake Band), ʔaq̓am (formerly known as St. Mary's Indian Band), Yaqan Nuʔkiy (Lower Kootenay Band) and Yaq̓it ʔa·knuqƛi'it (Tobacco Plains Indian Band). While the Ktunaxa Nation had elements of a shared common history of use of the Kootenay region of British Columbia, each of the First Nations had individual reserves allotted to them, they existed and continue to exist as distinct First Nations.

[8] The pre-emptions that Canada now admits breached its fiduciary duty to ʔaq̓am occurred between 1868 and 1915.

[9] ʔaq̓am filed its Declaration of Claim with the Tribunal on January 29, 2014. The Claim was amended on August 28, 2014, September 29, 2014, May 19, 2017, and April 27, 2018. ʔaq̓am alleges that the Respondent breached legal and fiduciary duties regarding loss of entitlement to Lots 1, 2, 3 and 1063 consisting of 627.75 acres, otherwise known as the St. Eugene Mission Residential School Farm Lands (the Mission Farm Lands) and Lot 11558, totalling 767.75 acres, when Canada failed to purchase those lands for the benefit of ʔaq̓am.

[10] Relevant to the Application, ʔaq̓am claims that it had a cognizable Aboriginal interest in the Mission Farm Lands and Lot 11558 and that the Crown owed it a fiduciary obligation in relation to the First Nation's cognizable interest. ʔaq̓am pleads further that Canada was aware of its cognizable interest in the Mission Farm Lands and Lot 11558 because Commissioner Peter O'Reilly had met with the First Nation in 1884. ʔaq̓am seeks compensation for the loss of the Mission Farm Lands and Lot 11558 (Fourth Amended Declaration of Claim at paras. 71, 75, 120, 124).

[11] The issues raised by the Declaration of Claim, therefore, are as follows:

1. Did ʔaq̓am have a cognizable interest, based on historic use and occupation in the Mission Farm Lands and Lot 11558?

2. Did Canada breach its fiduciary duty to ʔaq̓am by permitting pre-emptions of the Mission Farm Lands and Lot 11558?

3. If so, what compensation is ʔaq̓am entitled to as a result?

[12] Canada filed its Response to the Declaration of Claim with the Tribunal on March 20, 2014, denying the allegations contained in the Claim. It made amendments to its Response on September 29, 2014, June 19, 2017, and June 28, 2018.

[13] On July 10, 2015, the Tribunal issued a section 22 Notice to ʔakisq̓nuk, as well as the Lower Kootenay Band, the Shuswap Band and the Tobacco Plains Indian Band (the s. 22 Notice). The s. 22 Notice informed all four First Nations, including the Applicant, that a decision in the Claim may significantly affect their interests. The s. 22 Notice further stated that if the Applicant and the other three First Nations wished to apply for party status, they must file an application with the Tribunal pursuant to section 24 of the *SCTA* within 60 days of receipt of the s. 22 Notice. No applications under section 24 of the *SCTA* were made at this time.

[14] For nearly four years, from 2015–2019, the Parties prepared and exchanged thousands of documents and numerous historical expert reports. They attended several Case Management Conferences and spent many days interviewing witnesses. Two oral history evidence hearings were held in the community. Throughout this period, the Parties negotiated on the topic of validity.

[15] The negotiations proved successful. On March 20, 2019, the Parties filed a draft consent order on validity for review by the Tribunal wherein the Parties agreed (1) that Canada had breached its fiduciary duty to ʔaq̓am by failing to take measures to protect the Mission Farm Lands and Lot 11558 from pre-emption and by failing to challenge the pre-emptions of the lands in question; (2) that they intend to negotiate a settlement on compensation; and (3) that compensation is to be assessed under paragraph 20(1)(c) of the *SCTA*.

[16] On April 18, 2019, the Tribunal issued an order granting the Parties a stay of the proceeding to permit the Parties to negotiate an agreeable award of compensation. The Parties have been negotiating since that time. They have prepared and exchanged expert appraisal reports dealing with the current unimproved market value and loss of use of the Mission Farm Lands and Lot 11558.

[17] On December 9, 2019, ʔaq̓am wrote to ʔakisq̓nuk informing the Applicant that it understood Canada had sent ʔakisq̓nuk a letter to ask whether the Applicant would be filing a specific claim regarding the Mission Farm Lands and Lot 11558. ʔaq̓am further advised ʔakisq̓nuk

that it viewed this invitation from Canada as an attempt to stall compensation with ʔaq̓am and to "encourage internal conflicts between our [c]ommunities" (Schedule A to the correspondence filed with the Tribunal by the Applicant on February 15, 2024). ʔaq̓am ended the correspondence by encouraging ʔakisq̓nuk to contact ʔaq̓am directly to discuss the matter.

[18] On January 14, 2021, ʔaq̓am wrote to ʔakisq̓nuk to again inform the Applicant of its view that the earlier letter Canada sent to ʔakisq̓nuk was a tactic to stall negotiations and "encourage internal conflict among our communities" (Schedule A to the correspondence filed with the Tribunal by the Applicant on February 15, 2024).

[19] From the time of the s. 22 Notice in 2015 through to 2021, the same legal counsel represented both ʔaq̓am and ʔakisq̓nuk. In May 2021, ʔakisq̓nuk engaged independent legal counsel through MLT Aikins LLP. On August 18, 2021, ʔakisq̓nuk's newly-retained counsel contacted the Parties to advise that it had drafted an application for party status.

[20] From August 2021 to January 2022, at my request, ʔaq̓am, ʔakisq̓nuk and Canada entered into discussions to determine if the Parties would be willing to consent to the forthcoming application.

[21] On January 14, 2022, ʔakisq̓nuk advised the Tribunal that the negotiations had broken down and that it had become apparent that a consent order would not be able to be negotiated.

[22] On February 24, 2022, the section 24 notice of application (the Application) was filed. ʔakisq̓nuk asserts that the Crown failed to discharge or fulfill its legal and fiduciary obligations with respect to the pre-emptions of the Mission Farm Lands and Lot 11558. The written submissions plead in relevant part that:

> Both [ʔaq̓am] and [ʔakisq̓nuk] historically used and occupied the Mission Farm Lands. This is reflected even in the more recent history as described in [ʔaqam]'s Declaration of Claim. Due to the historic use and occupation of the Mission Farm Lands by both First Nations, they both have a potential claim against Canada for the loss of the Mission Farm Lands. [Written Submissions of the Applicant filed February 15, 2024, at para. 26]

[23] The Applicant pleads further that:

> …if it assumed that the facts alleged in [ʔaq̓am's] own Declaration of Claim are true, then it can be assumed that [ʔakisq̓nuk] has a cognizable interest in the

> Mission Farm Lands based on historic use and occupation leading up to and including the 20th century. [emphasis in original; citation omitted; para. 29]

[24] ʔaq̓am disputes this assertion, writing in its submissions that although the Claimant and Applicant are both members of the larger Ktunaxa Nation, their territorial interests were and are different. The Claimant writes:

> At the time of pre-emption, the people of ʔaq̓am used and occupied the lands at the confluence of Joseph Creek and the St. Mary's River, which included the Mission Farm Lands and Lot 11558. The people of ʔakisq̓nuk used and occupied lands that were a three-day ride on horseback away from the Mission Farm Lands. [Written Submissions of the Claimant filed February 28, 2024, at para. 17]

[25] On February 28, 2022, at a Case Management Conference, I recommended that the Applicant and the Parties seek to negotiate a confidentiality agreement which would allow all documents exchanged between Canada and ʔaq̓am to be shared with ʔakisq̓nuk. I further recommended that, upon review of the documents, the Applicant advise whether it may be able to reconsider its position regarding the terms proposed by ʔaq̓am to consent to the Application.

[26] In November 2022, a confidentiality agreement was entered into. In December 2022, ʔakisq̓nuk received Canada's and ʔaq̓am's documents. On January 6, 2023, ʔakisq̓nuk advised that its review of the documents was complete and that its position on the terms proposed by ʔaq̓am had not changed.

[27] The Application was heard by videoconference on April 3 and 4, 2024.

IV. ADDING A PARTY TO A CLAIM AT THE TRIBUNAL

[28] The test to add a party to a proceeding at the Tribunal comes from *Doig River First Nation v Her Majesty the Queen in Right of Canada*, 2013 SCTC 7 [*Doig River*]. In that decision, the Tribunal used a two-part test to determine whether an applicant should be added as a party:

> (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 [party] be just and convenient to determine the issues in the litigation in question? [*Doig River* at para. 26, citing *Ipsos SA v Reid*, 2005 BCSC 1114 at para. 8]

[29] As a condition precedent to this test, however, section 24 of the *SCTA* dictates that an applicant must be in receipt of a section 22 notice before it can make an application. Section 24

reads:

> **24** 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.

[30] It is not unusual for the Tribunal to issue a section 22 notice as a preliminary step in the proceeding. Subsection 22(1) of the *SCTA* provides that:

> **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.

[31] The notice is designed to be issued indiscriminately, to ensure that if there is any chance that the interests of the stated third party may be affected by the Tribunal's decision, they are provided with timely notice of this possibility. The notice is not meant to suggest that the interests of the third party will be affected, only that they might be affected, and the wording of the section 22 notice reflects this. The notice states that a Tribunal decision on a matter "may significantly affect the interests" of the recipient of the notice. The Tribunal's approach to date in issuing section 22 notices has been "generous and flexible" and a low threshold has been applied (*Metlakatla Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 4 at para. 26; *Cook's Ferry Indian Band v His Majesty the King in Right of Canada*, 2023 SCTC 2 at para. 46). The test for party status is more stringent. In this Claim, a section 22 notice was sent to four separate First Nations.

[32] The Tribunal has considered a section 24 application by a First Nation on two prior occasions: the aforementioned *Doig River*, and *Birch Narrows First Nation v Her Majesty the Queen in Right of Canada*, 2018 SCTC 8 [*Birch Narrows*]. On both occasions, the Tribunal granted the applicant First Nation party status as it considered the applicant a necessary or proper party to the proceeding.

[33] In the earlier of the two claims, the Doig River First Nation (Doig River) asserted that Canada breached its legal obligations by failing to provide mineral rights to the First Nation in three reserves. Originally, Doig River and the Blueberry River First Nations (Blueberry River) existed as one single band, the Fort St. John Beaver Band, and the three reserves in question were held, undivided, by the predecessor band. When the predecessor band was divided into Doig River

and Blueberry River in 1977, the three reserves were also divided between Doig River and Blueberry River. Doig River, in its claim, sought compensation for the loss of mineral rights in the three reserves. Prior to any decision on the merits, Blueberry River filed an application for party status with respect to Doig River's claim. Doig River consented to the application.

[34] The Tribunal held that the subject matter with respect to the issue of liability was not merely analogous but identical. Doig River's claim sought compensation for the loss of the mineral rights in the reserves, which included Blueberry River's reserves (*Doig River* at para. 5). The Tribunal held that granting Blueberry River claimant status would enable "full, final and effective adjudication of all the issues without delay, inconvenience or the expense of separate proceedings" and that there "was no prejudice to the Respondent" and no "valid reason not to add [Blueberry River] as a [party]" (*Doig River* at paras. 9–10).

[35] In *Birch Narrows*, the claimant asserted that Canada had failed to provide the Birch Narrows First Nation (Birch Narrows) with the agricultural and economic benefits the First Nation was entitled to under the terms of Treaty No. 10 (Declaration of Claim of Birch Narrows filed December 4, 2017, in Tribunal file no. SCT-5001-17 at para. 10). Prior to any decision on the merits, the Buffalo River Dene Nation (Buffalo River) applied for party status with respect to Birch Narrows's claim. As in *Doig River*, Birch Narrows and Buffalo River had originally been part of one band; in this case the Clear Lake Band, the signatory to Treaty No. 10. Buffalo River submitted that its history was effectively identical to Birch Narrows and that, on validity, it would not take any different positions (*Birch Narrows* at para. 6).

[36] The Tribunal held that:

> Caution should always be exercised in joining a party as a co-claimant because of the potential that the co-claimants may present discordant cases in advancing their material interests … [*Birch Narrows* at para. 15]

[37] The Tribunal held that in that case, there was little concern that Buffalo River would present a discordant case, as the narrative giving rise to the Buffalo River claim was identical to that presented by Birch Narrows. The Tribunal further held that (1) there was a common question or issue between the parties; and (2) adding Buffalo River would result in the just, cost-effective and expeditious adjudication of the two claims (*Birch Narrows* at para 16).

[38] The facts of *Doig River* and *Birch Narrows* differ significantly to the facts of this Application. In both *Doig River* and *Birch Narrows*:

1. the claimant and the applicant for party status had previously formed part of the same First Nation;
2. the claimant consented to the addition of the applicant as a party;
3. the applicant set out material facts or particulars in support of its application; and
4. at the time of the application for party status, the Tribunal had not yet issued a decision on validity.

[39] In addition to the test used at the Tribunal to add a party to a proceeding, the Tribunal in *Doig River* set out the following guidance:

1. A "necessary and proper party," as set out in section 24 of the *SCTA* is "one that must be added to enable the effective and complete adjudication of the matter" (para. 23). A party is most necessary where the person's participation is required for the person to be bound by the result (para. 25).
2. If adding a party would cause "undue delay or complication or would prejudice a party," then separate proceedings may remain appropriate (para. 26).
3. Adding a party is at the discretion of a court or tribunal, and requires a balance of all relevant factors. No single factor is determinative (para. 27).
4. The fact that an applicant has delayed coming forward does not foreclose the possibility of adding it as a party. This is particularly so "where there is no prejudice to [the original parties] and [the original parties] have had full notice" (para. 28).

V. ANALYSIS

[40] I will return to the issues as listed above from the Agreed Statement of Issues, and analyse each in turn.

1. Threshold issue

[41] The threshold issue in the Agreed Statement of Issues asks whether the question of

ʔakisq̓nuk's cognizable interest is relevant to its Application to become a party pursuant to section 24 of the *SCTA* and, if so, is it necessary for ʔakisq̓nuk to lead evidence of this cognizable interest and, if it is necessary, what is the standard of proof?

[42] The question of a cognizable interest in land is relevant to the merits of the Claim. In the reserve creation process in British Columbia, the Crown will have a fiduciary duty to a First Nation where:

1. the First Nation has a specific Aboriginal interest in land;

2. the specific Aboriginal interest is "cognizable" or "capable of being known or recognized" by the Crown; and

3. the Crown exercises discretionary control over the Aboriginal interest in land.

[43] A specific Aboriginal interest exists in lands that were habitually and historically used and occupied by a First Nation (*Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4 at paras. 80–81, [2018] 1 SCR 83 [*Williams Lake*]).

[44] Canada has agreed that the Claimant has a valid Claim. In order to reach this agreement, ʔaq̓am had to prove to the Crown it had a cognizable interest, based on historic use and occupation, in the Mission Farm Lands and Lot 11558 at the time of the pre-emptions. By permitting pre-emptions where ʔaq̓am had such a cognizable interest and thereby exercising the fiduciary's discretion to the detriment of the beneficiary, Canada breached its fiduciary duty. The Crown has admitted this breach. The only outstanding issue between the Parties is the quantum of compensation owed to ʔaq̓am as a result of the Crown's fiduciary breach.

[45] ʔakisq̓nuk has not proven the validity of its potential claim, and Canada has not admitted liability. However, with this Application, ʔakisq̓nuk is not seeking to establish Canada's liability. It is seeking party status. It is, therefore, not necessary for ʔakisq̓nuk to lead evidence to prove it has a cognizable interest in the Mission Farm Lands and Lot 11558 at the time they were pre-empted. This would be an unusually high onus for such a procedural matter.

[46] At the same time, ʔakisq̓nuk led no evidence and pleaded no facts that if deemed true, would show it had a cognizable interest in the lands at issue, beyond the fact that both ʔakisq̓nuk

and ʔaq̓am are members of the larger Ktunaxa Nation.

[47] Although it is not a requirement generally that an applicant for party status in this context prove a cognizable interest, the fact that ʔakisq̓nuk applies for party status without such evidence or pleadings in a claim where the claimant has proven liability is a relevant consideration. If a cognizable interest is later plead or proven, it could form the basis of a breach of the Crown's fiduciary duty to ʔakisq̓nuk with respect to the Mission Farm Lands and Lot 11558 at the time they were pre-empted. However, at this time, ʔakisq̓nuk has neither pled nor proven its potential claim and, while Canada supports ʔakisq̓nuk's Application, the Crown does not go so far as to admit that ʔakisq̓nuk's potential claim is valid.

[48] Therefore, while not detracting from the fact that it is not necessary for an applicant to prove a cognizable interest prior to joining a claim as a party in a general sense, in the context of this Claim the lack of evidence or pleading, if deemed true, showing ʔakisq̓nuk's cognizable interest in the Mission Farm Lands and Lot 11558 at the time they were pre-empted is relevant to the test for adding a party, as will become apparent below.

2. Issues on the Application to add ʔakisq̓nuk as a party

a) Is there a question or issue between the Claimant and Applicant relating to the relief, remedy or subject matter of the Claim

[49] Unfortunately, the material filed in support of the Application is not sufficient to demonstrate an issue between the Claimant and Applicant relating to the relief, remedy or subject matter of the Claim, and the Application fails on this basis.

[50] ʔakisq̓nuk submits that as it and ʔaq̓am are both members of the Ktunaxa Nation, the two First Nations share a common history as it relates to the use and occupation of the Mission Farm Lands and Lot 11558. ʔakisq̓nuk argues that given that ʔaq̓am and ʔakisq̓nuk both historically used and occupied the Mission Farm Lands and Lot 11558, both have a potential legal claim against Canada for failing to prevent the pre-emptions of the Mission Farm Lands and Lot 11558. Canada's failure to prevent the pre-emptions of the Mission Farm Lands and Lot 11558, the Applicant submits, is the subject matter of the Claim. Therefore, it is argued, ʔakisq̓nuk has a direct interest in both the subject matter of the Claim and the relief sought.

[51] In my view, ʔakisq̓nuk's submission ignores the fact that Canada's failure to prevent the pre-emptions of the lands at issue is relevant only if there is a finding of a cognizable interest in the lands. It is a cognizable interest in the Mission Farm Lands and Lot 11558 prior to pre-emption that gives rise to Canada's fiduciary duty to protect the lands from pre-emption, the breach of the fiduciary obligation by failing to take measures to protect the Mission Farm Lands and Lot 11558 from pre-emption and by failing to challenge the pre-emptions of the Mission Farm Lands and Lot 11558. Without establishing a cognizable interest in the subject lands, therefore, there is no basis for a claim against Canada for failing to prevent the pre-emptions of the subject lands. The threshold subject matter of the Claim is the cognizable interest in the Mission Farm Lands and Lot 11558. Without such a finding, liability is not established and no remedy or relief follows.

[52] Pleadings can support a finding of common questions or issues between an applicant and parties but, to do so, they must satisfy the Tribunal that, presuming the pleadings are true, they support a finding of commonality between a claimant and an applicant with respect to the subject matter, remedy or relief of a claim. But, as noted, the threshold subject matter of the Claim is the cognizable interest in the subject lands at the time of the pre-emptions. In order to demonstrate that there is a question or issue between the Applicant and the Parties relating to the relief, remedy or subject matter of the Claim, ʔakisq̓nuk must provide the Tribunal with pleadings that, if deemed true, would establish a cognizable interest, based on its historic and habitual use and occupation, in the Mission Farm Lands and Lot 11558 at the time they were pre-empted, therefore giving rise to a fiduciary duty of Canada to ʔakisq̓nuk, a breach thereof and a remedy as a result (*Williams Lake* at para. 81). For greater certainty, the Applicant is not required to prove the existence of a cognizable interest in the subject lands just to be added as a party to the Claim, but it must plead or rely upon material facts that, if deemed true, would establish its cognizable interest.

[53] In *Jensen v Samsung Electronics Co Ltd*, 2021 FC 1185 [*Jensen*] (aff'd FCA, leave to appeal to SCC refused), the Federal Court considered a motion by plaintiffs for an order certifying a competition law matter as a class action. The plaintiffs alleged that the three leading manufacturers of a certain type of semiconductor memory chip had conspired to limit the global supply and raise the price of the memory chips in question. One of the elements of the test required the plaintiffs to show that their claims raised "common questions of law or fact" (subsection 334.16(1) of the *Federal Courts Rules*, SOR 98/106). The Federal Court noted that the plaintiffs

were required to "plead facts that are sufficient to support a legally recognized cause of action" and which they intended to rely on in advancing their claim (para. 71). The pleadings must indicate "who, when, where, how and what" gave rise to the defendant's liability (para. 75). Material facts in pleadings must be supported by "sufficient particularization, and must not be bare assertions or conclusory legal statements based on assumptions or speculation" (para. 79). For the purposes of the motion, allegations of fact can be assumed to be true, but not if they are "vague or imprecise statements" or "bare allegations" (paras. 81–82). Specifically, the Federal Court stated as follows:

> Turning to the presumption that allegations of fact are true, it must be stressed that this presumption has some limits. The alleged facts are assumed to be true, except when "they are manifestly incapable of being proven". Allegations of fact are presumed to be true, provided that they are sufficiently precise to ensure that they effectively support the existence of the right being claimed. Allegations of facts confined to vague or imprecise statements, or to generalities, cannot be assumed to be true as they are more akin to personal opinion, speculation or conjecture. In such cases, a court can neither presume the existence of something that the allegations do not contain nor infer something that could have been included in them. There has to be some specific, tangible facts, and allegations will not be assumed to be true if they are not precise enough or if they are only speculative.
>
> While the Court must accept as true the material facts as pleaded, this obligation does not extend to bare allegations and bald conclusory legal statements based on assumptions or speculations as these are incapable of proof. In other words, allegations which rely upon assumptions and speculations unsupported by material facts cannot be assumed to be true. Also, the Court is not bound to accept as necessarily true allegations of fact that "are inconsistent with common sense, the documents incorporated by reference, or incontrovertible evidence proffered by both sides for the purpose of the motions." [emphasis added; citations omitted]

[54] Considering the Tribunal's significant role in the process of reconciliation, the funding challenges a First Nation faces in advancing a specific claim and the Tribunal's jurisdiction to manage its own process pursuant to section 13 of the *SCTA*, in my view, the obligation to plead sufficient particulars to support the existence of commonality with a claim on a section 24 application should not be as onerous as that described in a court proceeding dealing with issues of competition law as in *Jensen*. Having said that, the threshold must be more than what is being relied upon by ʔakisq̓nuk. ʔakisq̓nuk states that "[b]oth [ʔaq̓am] and [ʔakisq̓nuk] historically used and occupied the Mission Farm Lands." It submits that this alleged fact and the asserted cognizable interest in the Mission Farm Lands are supported by facts alleged in ʔaq̓am's Declaration of Claim. However, between ʔakisq̓nuk's written submissions and ʔaq̓am's Declaration of Claim, there are no alleged material facts which, if presumed to be true, would support the existence of a cognizable

interest in the lands at issue at the time of the pre-emptions, a fiduciary duty owed by the Crown to ʔakisq̓nuk to protect the lands from pre-emption, and a breach of the fiduciary duty.

[55] The order on validity states that Canada breached a fiduciary obligation by failing to take measures to protect the Mission Farm Lands and Lot 11558 from pre-emption and by failing to challenge the pre-emptions. In order to establish a common issue with ʔaq̓am, ʔakisq̓nuk had to have pled material facts regarding its historical use and occupation of specific locations within the Mission Farm Lands and Lot 11558 prior to the pre-emptions. All the material facts relied upon by ʔakisq̓nuk to show a cognizable interest, including those from ʔaq̓am's Declaration of Claim, occurred after the lands were pre-empted. To give but one example, ʔakisq̓nuk's Application describes the eventual allotment of Lot 1—where the St. Eugene Residential School was set up in 1874—as being "made to the Upper Kootenay which would have included [ʔakisq̓nuk] and Tobacco Plains, and not to specific Ktunaxa Nations" (Application at para. 12(b)). This may be true, but the pre-emption of Lot 1 occurred, according to the Declaration of Claim, in 1868, years before the residential school was set up and attended by members of ʔakisq̓nuk (Fourth Amended Declaration of Claim filed April 27, 2018, at para. 13).

[56] The purpose of pleading material facts is to show that an applicant has a common issue relating to the relief, remedy or subject matter of the original claim. In each application, the nature of relevant material facts to be pled in support of an application for party status will depend on the nature of the original claim. In both *Birch Narrows* and *Doig River*, the applicant pled material facts as grounds for its application which, if presumed true, were sufficient to establish a common issue between the claimant and applicant.

[57] In *Birch Narrows*, the claimant asserted that Canada had failed to provide it with the agricultural and economic benefits Birch Narrows was entitled to under the terms of Treaty No. 10 (Declaration of Claim of Birch Narrows filed December 4, 2017, in Tribunal file no. SCT-5001-17 at para. 10). Buffalo River, in its application for party status, provided the following material facts in support of its application:

> **Grounds for the Application**
>
> On August 28, 1906, the Clear Lake Band ("Clear Lake"), the predecessor band to Buffalo River and Birch Narrows, adhered to and executed Treaty 10 at Île-à-la-Crosse.

> As the predecessor to both Buffalo River and Birch Narrows, all dealings between Clear Lake and Canada were conducted by the Chief and other officials of Clear Lake on behalf of the members of both Buffalo River and Birch Narrows.
>
> Buffalo River and Birch Narrows were not recognized by Canada as separate entities until they became the successors to the Clear Lake Band upon its division in 1972.
>
> The text of Treaty 10 expressly provided that "[F]urther His Majesty agrees to furnish such assistance as may be found necessary or advisable to aid and assist the Indians in agriculture or stock-raising or other work."
>
> During the negotiations that preceded the execution of Treaty 10, the Treaty Commissioner received a request for cattle and the provision of cattle and farm equipment was discussed.
>
> When a second Treaty Commissioner met the Clear Lake Band at Île-à-la-Crosse in 1907, he received a request for agricultural implements and seed. Some of what was requested was delivered before the 2008 annuity payment, at which additional specific requests for assistance were made.
>
> Over the next four decades, documentary records establish the following.
>
> a. Provision of agricultural and economic assistance to the Clear Lake Band was limited and inconsistent.
>
> b. Notwithstanding the opinion of federal officials that agriculture was not possible in the Treaty 10 area, Clear Lake members made considerable progress using only their own initiative.
>
> c. Ultimately, however, the absence of assistance from Canada prevented Clear Lake and its members from reaching a sufficient degree of success to maintain an agricultural economy.
>
> Throughout these years, Buffalo River and Birch Narrows were described by documentary evidence as a single entity (Clear Lake) and only rarely is there any chance of differentiating between the two groups.
>
> …
>
> Buffalo River submits that for the reasons set out above, Buffalo River is directly affected by any decisions of the Tribunal in the Birch Narrows Action and ought to have an opportunity to participate in the Birch Narrows Action. [Application of Buffalo River filed July 20, 2018, in Tribunal file no. SCT -5001-17 at paras. 5–12, 15]

[58] Buffalo River provided considerable detail to show that there was a common issue between itself and the claimant. The Tribunal held that the narrative giving rise to the Buffalo River claim was identical to that presented by the claimant, Birch Narrows, and, therefore, there was a common question or issue between the proposed party and the claimant. Ultimately, the Tribunal determined

that adding Buffalo River as a party would result in the just, cost-effective and expeditious adjudication of the two claims (*Birch Narrows* at para. 16).

[59] At the time the alleged breaches of fiduciary duty arose in *Doig River*, Doig River and Blueberry River existed as one band and the reserves at issue were held, undivided, by that band. Therefore, the Tribunal held that the subject matter with respect to the issue of liability was not merely analogous but identical. Blueberry River provided the following particulars in support of its application for party status:

> The subject matter of the claim is the legal obligation of the Crown in relation to I.R.s 204, 205 and 206 (the "Reserves"), which were set aside for the former Fort St. John Beaver Band without mineral rights. As a successor of the Fort St. John Beaver Band, Blueberry River has a direct interest in every issue related to the subject matter of the proceedings.
>
> The relief sought is compensation for the loss of these mineral rights. When the Fort St. John Beaver Band divided in 1977, no mineral rights were allocated because none had been set aside (the obligation of the Crown to do so forming the subject matter of these proceedings). The entitlement to seek compensation for the loss of the mineral rights remains jointly held by Blueberry River and Doig River, with the issue of allocation to be determined either by the Tribunal or internally by agreement. It follows that Blueberry River has a direct interest in the relief sought. [Written Submissions of Blueberry River filed September 19, 2012, in Tribunal file no. SCT-7007-11 at paras. 16–17]

[60] Doig River sought compensation for the loss of the mineral rights in the replacement reserves, which included Blueberry River's reserves (*Doig River* at para. 5). In its application, Blueberry River clearly sets out the material facts showing that there was a common issue between Blueberry River and the claimant relating to the subject matter of the claim.

[61] Although evidence is not required in an application for party status, Blueberry River supported its application by referencing a historical document, the ministerial approval of the division of the predecessor band into the Doig River and Blueberry River First Nations. This document sets out the following: which reserve would belong to each band; which reserve would be divided equally between the two bands; and how the funds of the predecessor band were to be divided between the two newly constituted bands.

[62] ʔakisq̓nuk has not pleaded any material facts or particulars of its historical use and occupation of the Mission Farm Lands and Lot 11558 prior to their pre-emption. Rather, the

Applicant makes unsupported general assertions. For example, it asserts that both ʔaq̓am and ʔakisq̓nuk have historically used and occupied the Mission Farm Lands and Lot 11558, but does not plead or provide particulars of this stated common history including, for example, its extent and timeline. The Tribunal is without any material facts upon which it could conclude that, if deemed true, ʔakisq̓nuk has a cognizable interest in the lands at issue giving rise to Canada's liability.

[63] For this reason, I cannot say that there is a question or issue between ʔaq̓am and ʔakisq̓nuk relating to the relief, remedy or subject matter of the Claim, as the threshold subject matter of the Claim is a cognizable interest in the Mission Farm Lands and Lot 11558, and the liability, relief and remedy flows as a result of such a finding.

b) Is the joinder of ʔakisq̓nuk just and convenient to determine the issues in the Claim and consistent with the just, expeditious and final resolution of the specific claims of both ʔaq̓am and ʔakisq̓nuk?

[64] As stated in *Birch Narrows*, section 24 of the *SCTA* is to be interpreted consistently with the overall purpose and scheme of the act, which "is designed to facilitate the just, expeditious and final resolution of specific claims" (para. 10).

[65] From the perspective of ʔaq̓am, adding ʔakisq̓nuk as a party is not consistent with the just, expeditious and final resolution of the Claim. ʔaq̓am filed its Claim with the Tribunal on January 29, 2014. Five years later Canada conceded liability. The Parties have been negotiating a potential compensation settlement since 2019. Adding ʔakisq̓nuk now, ten years after the Claim was filed with the Tribunal, seven years after the s. 22 Notice was sent to ʔakisq̓nuk, five years after liability has been admitted, and during negotiations for the final stage of the proceeding, would delay the resolution of the Claim for an unknown period of time. If added, ʔakisq̓nuk would have to draft and file a Declaration of Claim, Canada would have to respond, bifurcation would have to be decided, expert reports may have to be exchanged and hearings may have to be held, before Canada will concede liability or validity is decided upon a full hearing.

[66] If ʔakisq̓nuk is not added as a party to the Claim, it would have to submit its specific claim to the Minister pursuant to section 16 of the *SCTA*. The Minister would have up to three years to review the specific claim and determine whether it will be accepted for negotiation. ʔakisq̓nuk

submits that, because Canada has indicated that it is not prepared to finalize a resolution with ʔaq̓am while other potentially-interested parties' rights remain unresolved, both First Nations will face delay should ʔakisq̓nuk have to pursue its specific claim with the Minister. If ʔakisq̓nuk is not granted claimant status, it is argued, the resolution of ʔaq̓am's Claim will be delayed while ʔakisq̓nuk pursues its claim with the Minister, only to return to the same place the proceeding and negotiations between ʔaq̓am and Canada sit today (Written Submissions of the Applicant filed February 15, 2024, at para. 38). Further, ʔakisq̓nuk argues that if it is not added as a party to the Claim, it would effectively be bound to the outcomes of the Claim, without a remedy (para. 52).

[67] Canada argues that the *SCTA* provides that total compensation for a specific claim shall not exceed $150 million and that, for the purpose of compensation, the *SCTA* provides that two or more specific claims shall be treated as one if they are, among other things, made by different claimants but based on the same or substantially the same facts, and relate to the same assets (paragraph 20(1)(b) and subsection 20(4)). Canada argues that if ʔakisq̓nuk were to file a specific claim with the Minister, and proceed to file a Declaration of Claim with the Tribunal, the Tribunal would likely be required to treat ʔaqam and ʔakisq̓nuk's claims as a single claim because they are based on substantially the same facts and related to the same assets such that both claims would be subject to a single $150 million limit for compensation.

[68] The difficulty with the perspectives of ʔakisq̓nuk and Canada is that the Tribunal is without sufficient material facts in support of the Application to determine whether the two claims are based on the same or substantially the same facts in accordance with subsection 20(4) of the *SCTA*.

[69] In *Doig River*, the Tribunal stated:

> When the alleged breaches of fiduciary duty arose, [Doig River] and [Blueberry River] 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. [para. 35]

[70] In this case, unlike in *Doig River*, ʔaq̓am and ʔakisq̓nuk did not exist as one First Nation at the time of the breach of fiduciary duty. They are part of the same Indigenous Nation but ʔaq̓am and ʔakisq̓nuk always were and still remain separate and distinct First Nations under Canadian Law, having been granted separate and distinct reserves. ʔaq̓am has not pleaded that the Ktunaxa

Nation used and occupied the Mission Farm Lands and Lot 11558 at the time of the pre-emptions. The two claims involve the identical lands but, without any material facts pled of ʔakisq̓nuk's historic use and occupation of those lands to support ʔakisq̓nuk's cognizable interest at the time of the pre-emptions, the applicability of subsection 20(4) remains unknown. This is not to suggest that if ʔakisq̓nuk's cognizable interest is properly pled, proved or agreed to that a subsection 20(4) application would be successful. Rather, the complex and case-by-case analysis of a subsection 20(4) application cannot even be contemplated at this stage, given the lack of material facts in the Application.

[71] In these circumstances, the joinder of ʔakisq̓nuk is not consistent with the just, expeditious and final resolution of the Claim. The addition of ʔakisq̓nuk will delay the final resolution of the Claim. ʔaq̓am has worked many years to satisfy Canada of its liability. Any further delay, without good reason, is inconsistent with the process of reconciliation. Canada and ʔaq̓am should properly continue to resolve the issue of compensation and bring finality to the longstanding Claim. If Canada refuses to negotiate, the Tribunal stands ready to determine compensation if necessary.

[72] ʔakisq̓nuk will not be prejudiced as it may pursue its specific claim in the normal course, by submitting its specific claim with the Minister. This is an important step in the process of reconciliation as negotiation of specific claims between Canada and First Nations remains the preferred means of settlement, if possible. The courts have repeatedly recognized that good faith negotiation is preferable to litigation as a means of achieving reconciliation between the Crown and Indigenous claimants (*Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at para. 186, 153 DLR (4th) 193; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 14, [2004] 3 SCR 511).

[73] If ʔakisq̓nuk's potential claim is accepted for negotiation and, during negotiation, Canada determines that it is based on the same or substantially the same facts as ʔaq̓am's Claim, the Minister can consent in writing to the filing of ʔakisq̓nuk's potential claim with the Tribunal. The *SCTA* provides for a process to determine whether two claims are properly subject to one claim limit. Paragraph 8(2)(b) provides that, upon application by a party, the Chairperson may order that a specific claim is, together with any other specific claim, subject to one claim limit under subsection 20(4). The Chairperson will be tasked with determining if the two claims are based on

the same or substantially the same facts, whether they relate to the same assets and whether it is appropriate to limit the claimants to the single claim limit. These determinations are presently premature and outside the scope of the Application.

[74] ʔakisq̓nuk submits that it will be prejudiced if it has to submit its specific claim to the Minister as it will be bound, without input, by the precedent set by ʔaq̓am's award of compensation. I disagree. The Tribunal has a rich history of rendering decisions that are subsequently used by First Nations and Canada as a basis for negotiation that leads to a settlement without the need of litigation. As one example, the resolution in *Beardy's & Okemasis Band #96 and #97 v Her Majesty the Queen in Right of Canada*, 2016 SCTC 15, addressed a longstanding historical specific claim wherein Canada failed to provide salaries and annuities promised to Chiefs and Headmen under Treaty No. 6. The Tribunal's reasoning and direction has been used on many occasions to negotiate a settlement on annuity claims between First Nations and Canada, and avoid litigation. If a precedent is established by ʔaq̓am's compensation award, it may work to assist ʔakisq̓nuk in pursuit of its own award of compensation in a timely and efficient matter, and provide a greater possibility of avoiding the costs and delay of litigation.

c) Will adding ʔakisq̓nuk as a party to the Claim serve the interests of justice in all the circumstances?

[75] In *Doig River*, the Tribunal noted that delay must be considered in a way that serves the interests of justice in all circumstances:

> 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. This is particularly so where there is no prejudice to the defendant and the defendant has had full notice. The discretion to add a party must be exercised in a manner that truly serves the interests of justice in all of the circumstances. [citations omitted; para. 28]

[76] As set out in the preamble of the *SCTA*, it is in the interests of all Canadians that the specific claims of First Nations be addressed in a just and timely manner, to promote reconciliation between First Nations and the Crown. As further stated therein, the Tribunal is designed to respond to the distinctive task of adjudicating specific claims in a just and timely manner. Timeliness is fundamental to the work of the Tribunal: the interests of justice are best served when specific claims are resolved without unreasonable delay.

[77] On July 10, 2015, the Tribunal sent a s. 22 Notice to Callison & Hanna as counsel for ʔakisq̓nuk and three other First Nations. The s. 22 Notice stated that a decision on the ʔaq̓am Claim may significantly affect the interests of ʔakisq̓nuk. At that time, Darwin Hanna from Callison & Hanna represented both ʔaq̓am on the instant Claim and ʔakisq̓nuk with respect to two other claims before the Tribunal. Independent legal counsel was engaged in May 2021.

[78] In a letter to the Parties dated August 18, 2021, newly-retained counsel for ʔakisq̓nuk informed counsel for the Parties that they intended to file an application for Akisq̓nuk to be added as a party to ʔaq̓am's Claim. Once independent legal counsel was engaged, therefore, ʔakisq̓nuk argues that it moved expeditiously to bring the Application.

[79] ʔakisq̓nuk took no steps to advance the Application, however, from July 10, 2015, to August 18, 2021. ʔakisq̓nuk argues that it should not be faulted for delay that occurred when it did not have the benefit of independent legal advice (Reply Written Submissions of the Applicant filed March 20, 2024, at para. 17). Rule 44 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119 [*SCT Rules*] states as follows:

> **Late application**
>
> 44 If a person makes an application for party status, or for leave to intervene, more than 60 days after the day on which they were served with the notice under subsection 22(1) of the Act, the Tribunal must, in deciding whether or not to grant the application, consider whether the person took all reasonable efforts to make the application in a timely manner.

[80] I note that, even after obtaining independent counsel, ʔakisq̓nuk took more than 60 days to express its intent to file the Application at issue in these Reasons.

[81] Throughout this time, ʔaq̓am worked diligently to satisfy Canada of the validity of its Claim. Canada conceded liability, the Claim was stayed and extensive efforts have been made by the Parties to reach an agreement on compensation.

[82] ʔakisq̓nuk argues that it took all reasonable efforts to bring the Application in a timely manner under the circumstances. The First Nation submits that Darwin Hanna was in a conflict of interest from July 2015 until April 2021, as he was representing both ʔaq̓am and ʔakisq̓nuk. ʔakisq̓nuk further argues that the two letters received from ʔaq̓am in 2019 and 2021 also contributed to the First Nation's inaction as they encouraged ʔakisq̓nuk to contact ʔaq̓am directly

and not Canada, despite Canada's invitation to do so. There is no evidence before me that ʔakisq̓nuk did in fact contact either ʔaq̓am or Canada after receipt of these letters.

[83] ʔakisq̓nuk has provided an explanation for the delay in responding to the s. 22 Notice. It submits that the lack of independent counsel in this unusual case explains the delay from July 2015 to May 2021. Ideally, ʔakisq̓nuk's independent legal counsel engaged in May 2021 would have not only expressed an intention to file an application within the 60-day limit, but ultimately filed affidavit evidence from a representative of ʔakisq̓nuk in support of the application. This evidence would explain why the Application was not filed for many years after receipt of the s. 22 Notice and how, despite the delay, ʔakisq̓nuk took all reasonable efforts to make the Application in a timely manner. Ideally, the affidavit evidence would have explained whether ʔakisq̓nuk received or relied upon legal advice in choosing not to respond to the s. 22 Notice, whether the concurrent representation subverted the s. 22 Notice, whether the two letters from ʔaq̓am to ʔakisq̓nuk contributed to the delay, whether ʔakisq̓nuk communicated with ʔaq̓am after receipt of the two letters, what was said between ʔaq̓am and ʔakisq̓nuk if so, or how this may have affected the delay in filing the Application. However, no such evidence is before me on this Application.

[84] The *SCT Rules* direct that I must consider, in deciding whether or not to grant the Application, whether ʔakisq̓nuk took all reasonable efforts to make the Application in a timely manner. This is an important consideration given the Tribunal's mandate, as noted above, to foster reconciliation with the timely resolution of specific claims. Ordinarily, any delay beyond the 60 days, without reasonable explanation, undermines the distinctive task of efficiently adjudicating claims at the Tribunal. ʔakisq̓nuk neither pled nor provided affidavit evidence sufficient for me to conclude that the First Nation took all reasonable efforts to make the Application in a timely manner.

[85] For these reasons, I cannot say that adding ʔakisq̓nuk as a party to the Claim would serve the interests of justice in all the circumstances.

d) Can ʔakisq̓nuk become a party pursuant to section 24 of the *SCTA* given that Canada admitted the validity of the Claim by ʔaq̓am?

[86] As noted above, the Parties executed a validity order on consent dated April 18, 2019. On February 24, 2022, the Application was filed.

[87] There may be a case wherein, upon balancing all of the relevant factors, it is appropriate to add a party to a claim after Canada has admitted liability with respect to the claim.

[88] It is not appropriate in this case, however, as I have concluded that the material filed in support of the Application is not sufficient to demonstrate an issue between ʔakisq̓nuk and ʔaq̓am relating to the relief, remedy or subject matter of the Claim. It is further not appropriate in this case as ʔakisq̓nuk neither pled nor provided affidavit evidence sufficient for me to conclude that it took all reasonable efforts to make the Application in a timely manner.

3. Did ʔakisq̓nuk take all reasonable efforts to make the Application to be added as a party in a timely manner?

[89] For reasons set out above, I have concluded that the Application record is without pleadings or evidence sufficient to demonstrate that ʔakisq̓nuk took all reasonable efforts to make the Application in a timely manner.

VI. CONCLUSION

[90] For reasons set out above, the Application is dismissed. The Parties did not seek costs on the Application and no costs are ordered.

VICTORIA CHIAPPETTA

Honourable Victoria Chiappetta, Chairperson

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20240611

File No.: SCT-7007-13

OTTAWA, ONTARIO June 11, 2024

PRESENT: Honourable Victoria Chiappetta

BETWEEN:

ʔAQ̓AM

Claimant (Respondent)

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations

Respondent (Respondent)

and

ʔAKISQ̓NUK FIRST NATION

Applicant

COUNSEL SHEET

TO: **Counsel for the Claimant (Respondent) ʔAQ̓AM**
As represented by Oliver C. Hanson and Andrea Piercy
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AND TO: **Counsel for the Respondent (Respondent)**
As represented by James Mackenzie and Shane Hopkins-Utter

Department of Justice

AND TO: **Counsel for the Applicant ʔAKISQ̓NUK FIRST NATION**
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