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CITATION: 2025 SCTC 1
DATE: 20250228

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:

OKANAGAN INDIAN BAND

Claimant (Respondent)

– and –

HIS MAJESTY THE KING IN RIGHT OF
CANADA

As represented by the Minister of Crown-
Indigenous Relations

Respondent (Respondent)

– and –

WESTBANK FIRST NATION

Applicant

Kelsey Rose, for the Claimant (Respondent)

Monina Glowacki, for the Respondent
(Respondent)

Christopher Devlin, for the Applicant

HEARD: February 13, 2025

REASONS ON APPLICATION

Honourable Diane MacDonald

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

Cases Cited:

Beardy's & Okemasis Band #96 and #97 v Her Majesty the Queen in Right of Canada, 2015 SCTC 3; *Red Pheasant Cree Nation v Her Majesty the Queen in Right of Canada*, 2021 SCTC 3; *Doig River First Nation and Blueberry River First Nations v Her Majesty the Queen in Right of Canada*, 2013 SCTC 7; *Birch Narrows First Nation v Her Majesty the Queen in Right of Canada*, 2018 SCTC 8; *Kwikwetlem First Nation v British Columbia (AG)*, 2021 BCCA 311, 461 DLR (4th) 357; *ʔaqam v His Majesty the King in Right of Canada*, 2024 SCTC 4; *Canada (Fisheries and Oceans) v Shubenacadie Indian Band*, 2002 FCA 509.

Statutes and Regulations Cited:

Specific Claims Tribunal Act, SC 2008, c 22, preamble, ss 2, 3, 14, 16, 22, 24.

Indian Act, RSC 1952, c 149, s 17.

Indian Act, RSC 1985, c I-5, s. 2.

Westbank First Nation Self-Government Act, SC 2004, c 17.

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I. OVERVIEW

[1] This is an Application for Leave and Notice of Application (Application) by the Westbank First Nation (Westbank or Applicant) to obtain party status in the Okanagan Indian Band (Okanagan or Claimant) Claim against Canada currently before the Specific Claims Tribunal (Tribunal). The Application arose out of a notice pursuant to section 22 (section 22 Notice) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [SCTA], sent to Westbank on August 9, 2024.

[2] The underlying Okanagan Claim alleges that Canada breached statutory, fiduciary and legal duties when it failed to honour the wishes of the Arrow Lakes Band and Okanagan to amalgamate the two First Nations in 1952. This Application is about whether Westbank—who existed as a single entity with Okanagan under the name “Okanagan Indian Band” until October 18, 1963—should be a party to the Claim. For convenience, the combined Okanagan Indian Band that existed prior to October 18, 1963, will be referred to in these Reasons as “the Original Okanagan Band”. Westbank claims that as a successor to the Original Okanagan Band, it has a direct interest in the Claim.

[3] The term “Indian” is used in these Reasons when referring to the *Indian Act*, as well as some historical references. My use of the term “Indian” is not an endorsement of the term which is generally considered pejorative. Where possible, I have used the term First Nation or Indigenous.

[4] By way of background, in 1952 and 1953 the Original Okanagan Band and the Arrow Lakes Band both requested amalgamation under paragraph 17(1)(a) of the *Indian Act*, RSC, 1952, c 149. Despite initial interest on the part of Canada, the Original Okanagan Band and Arrow Lakes Band were not amalgamated. Instead, after the last known member of the Arrow Lakes Band died, Canada declared the Arrow Lakes Band “extinct” and determined that its reserve land should revert to the Province of British Columbia.

[5] Okanagan asserts that Canada’s breach in failing to amalgamate the two First Nations deprived Okanagan of the use and benefit of the Arrow Lake Reserve and its assets. Okanagan seeks compensation for being deprived of these resources to which it would have been entitled had Canada fulfilled its fiduciary duties and acted in the First Nations’ best interests. Westbank seeks to become a claimant and have full participatory rights in the proceeding before the Tribunal.

[6] The Application was heard by videoconference on February 13, 2025. For the reasons that follow, I grant Westbank's Application for party status in this Claim.

II. PURPOSE AND FRAMEWORK OF THE SPECIFIC CLAIMS TRIBUNAL

[7] The overarching purpose of the Tribunal is to resolve specific claims to promote reconciliation between First Nations and the Crown. It is designed to facilitate the just, expeditious and final resolution of specific claims (preamble and section 3 of the *SCTA*).

[8] The intention was to provide First Nations with access to a tribunal that would not deny their claims due to the passage of time. The Tribunal was established by Parliament to resolve claims arising from the Crown's failure to honour specific legal obligations to First Nations, in a forum where limitation periods could not be used as a defence (*Beardy's & Okemasis Band #96 and #97 v Her Majesty the Queen in Right of Canada*, 2015 SCTC 3 at paras. 403–06). It is a way in which to address some historical wrongs that is fair to both First Nation claimants and the Crown.

[9] Section 16 of the *SCTA* requires that, as a condition precedent to filing a claim with the Tribunal, a First Nation must first file a specific claim with the Minister of Crown-Indigenous Relations. The *SCTA* promotes good faith negotiation over litigation as a means of achieving reconciliation between the Crown and First Nation claimants. If negotiation is unsuccessful or if the Minister does not engage in negotiation within specified timeframes, the First Nation can file its claim with the Tribunal. The legislation is thus designed to have disputes addressed first through negotiation; only if negotiations fail should the matter proceed to a hearing before the Tribunal (*Red Pheasant Cree Nation v Her Majesty the Queen in Right of Canada*, 2021 SCTC 3 at para. 27).

[10] The *SCTA* provides two methods by which a First Nation may become a party to a claim before the Tribunal. The first is by filing a claim under sections 14–16. The second is via section 24 after receipt of a section 22 Notice from the Tribunal (*Doig River First Nation and Blueberry River First Nations v Her Majesty the Queen in Right of Canada*, 2013 SCTC 7 at para. 11 [*Doig River*]). A First Nation that is granted party status pursuant to section 24 of the *SCTA* will bypass the important policy objective of negotiation of specific claims. This is a primary reason why the rigorous test for granting party status as outlined below is applied.

[11] Section 2 of the *SCTA* defines a “specific claim” as a claim that is filed under section 14 of the *SCTA*. The claims listed in subsection 14(1) of the *SCTA* include breaches of legal obligations of the Crown with respect to reserve lands and management of other assets of First Nations.

III. CLAIM BACKGROUND

[12] In 1902, the Arrow Lakes Band was created. There are conflicting accounts in the historical record regarding the initial membership of the Arrow Lakes Band. In 1902, 243.10 acres of land on the western shore of Lower Arrow Lake, near the town of Burton, was set aside for the Arrow Lakes Band. From the affidavit and testimony before me, I understand that the Arrow Lakes Band was comprised of people from various Indigenous groups.

[13] The Arrow Lake Reserve was located on land edged by steep cliffs and was virtually inaccessible by road. By the early 1950s, Canada determined that Annie Joseph was the last remaining member of the Arrow Lakes Band, and this was not contested at the time. Both the Original Okanagan Band in 1952 and Annie Joseph in 1953 requested the amalgamation of the Original Okanagan Band and the Arrow Lakes Band.

[14] Rather than amalgamate the two First Nations when Annie Joseph died on October 1, 1953, on September 28, 1955, Canada declared the Arrow Lakes Band “extinct” and on January 5, 1956, determined that its reserve land should revert to the Province of British Columbia pursuant to Order in Council 1036/1938. Thus, Canada transferred control, management and administration of the Arrow Lakes Band reserve land to the Province of British Columbia.

[15] It is the failure to amalgamate the two First Nations and the reversion of the reserve land to the Province of British Columbia that Okanagan challenges in its Claim. Okanagan contends that Canada failed to honour the wishes of the Arrow Lakes Band and Okanagan to amalgamate. It claims that Canada’s failure to diligently consider and handle the amalgamation requests resulted in a breach of its legal, statutory and fiduciary duties. Okanagan asserts that Canada’s breach deprived Okanagan of the use and benefit of the Arrow Lake Reserve and band assets. It seeks compensation for these losses.

[16] Canada denies the validity of the Okanagan Claim and denies that it breached the duties alleged.

IV. PROCEDURAL HISTORY

[17] Okanagan filed its Declaration of Claim with the Tribunal on December 30, 2020. Canada filed its Response to the Declaration of Claim with the Tribunal on April 14, 2021. The Amended Declaration of Claim and the Amended Response were filed on June 1, 2023, and July 4, 2023, respectively.

[18] At several case management conferences from 2021 to 2024, the Tribunal determined that the interests of a number of groups may be affected by this Claim. As such, the Tribunal sent notices pursuant to section 22 of the *SCTA* to the Province of British Columbia, Westbank, the Lower Similkameen Indian Band, the Osoyoos Indian Band, the Penticton Indian Band, the Upper Nicola Indian Band, the Upper Similkameen Indian Band, the Sinixt Nation, the Ktunaxa Nation and the Tk'emlúps te Secwépemc Nation.

[19] On February 22, 2022, the Tribunal sent Westbank a section 22 Notice as well as information regarding the process for being added as a party or intervenor to an existing claim before the Tribunal. By way of a letter dated July 22, 2024, counsel for Westbank informed the Tribunal that Westbank had only recently become aware of the section 22 Notice issued two years earlier because there had been earlier challenges with regard to personnel in its government and administration. Counsel for Westbank requested that the Tribunal either send another section 22 Notice or extend the deadline to respond to the original section 22 Notice. On August 9, 2024, the Tribunal sent another section 22 Notice to Westbank.

[20] On October 8, 2024, Westbank filed the within Application with the Tribunal. It submits that a decision related to the Claim may affect its interests and sought to be granted party or, in the alternative, intervenor status in the Claim. However, by way of a Joint Case Management Conference Brief dated October 17, 2024, Westbank confirmed that, pursuant to section 24 of the *SCTA*, it only seeks to be added as a party in this Claim.

[21] Westbank has prepared a draft Declaration of Claim that it intends to file with the Tribunal in these proceedings should it be granted party status. At the hearing on the Application, Westbank noted that if its Application is successful, it will update its Declaration of Claim to align as much as possible with the Amended Declaration of Claim of Okanagan filed on June 1, 2023.

[22] The interpretation of section 24 of the *SCTA* should be consistent with the overall purpose and scheme of the *SCTA*, which is designed to facilitate the just, expeditious and final resolution of specific claims. The Tribunal has the authority to add a First Nation as a party claimant even though it has not previously filed a specific claim with the Minister and does not meet the statutory requirements pursuant to section 16 of the *SCTA* (*Birch Narrows First Nation v Her Majesty the Queen in Right of Canada*, 2018 SCTC 8 at para. 10 [*Birch Narrows*]).

V. ISSUES

[23] Okanagan, Westbank and Canada have agreed that the following issues must be determined by the Tribunal in this proceeding:

- Is Westbank a First Nation within the meaning of section 24 of the *SCTA*?
- Does the relief, remedy or subject matter of this Claim give rise to a question or issue between Westbank and the Parties in this Claim?
- Would granting Westbank party status in this Claim be just and convenient?

VI. PARTIES' POSITIONS

[24] Westbank argues it is a First Nation within the meaning of sections 2 and 24 of the *SCTA*. It contends that being added as a party is necessary to resolve both the validity issues and its entitlement to compensation in this Claim. Westbank argues further that adding Westbank as a claimant would permit the effective determination of these issues without delay, inconvenience or the expense of separate proceedings. It does not seek to disrupt the proceedings and will rely on the same historical facts as the Claimant to ground its claim.

[25] Okanagan takes no position on this Application. It has concerns about the implications regarding entitlement to compensation; however, it is content to address this issue at a later date.

[26] Canada wants to achieve a just, meaningful and timely resolution of the Claim. Accordingly, Canada consents to the Application of Westbank to be added as a party in the Claim provided that reasonable timelines are established for the filing of its Declaration of Claim and for Canada's Response to the Declaration of Claim. It also agrees that the issues regarding

compensation can be dealt with at a later date in this bifurcated Claim.

[27] In the hearing on the Application, Westbank indicated its readiness to proceed with its own claim as bifurcated should it be successful in its Application.

VII. LEGAL PRINCIPLES

[28] Applications for party status by First Nations are governed by section 24 of the *SCTA* which provides:

Party status of a First Nation

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.

[29] Section 24 is to be interpreted broadly to allow an aspiring claimant or respondent to be added to an existing claim “in circumstances where it is reasonable and appropriate to do so” (*Doig River* at para. 7).

[30] At paragraph 9 in *Birch Narrows*, Justice Grist helpfully summarized the applicable legal principles to be applied when a First Nation applies for party status in an active claim before the Tribunal:

The issue of adding parties to a matter before the Tribunal has been reviewed thoroughly in *Doig River First Nation and Blueberry River First Nations v Her Majesty the Queen in Right of Canada*, 2013 SCTC 7 [*Doig River*], which concerned an application for party status by the Blueberry River First Nations. Justice Smith held that section 24 should be interpreted broadly and purposively and allowed the addition. At paragraphs 26–28, Smith J. laid out the test for adding a party:

If adding a party would cause “undue delay or complication or would prejudice a party,” then separate proceedings may remain appropriate. 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?*

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 factor is determinative.

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. [footnotes omitted]

[31] In summary, the test for adding a party to an existing claim before the Tribunal was articulated in *Doig River* and in *Birch Narrows*. First the applicant must be a province or First Nation. If that is satisfied, the following test applies:

- Is there a question or issue between the proposed party and the parties relating to the relief, remedy or subject matter of the litigation?
- Will the adding of the proposed party be just and convenient to determine the issues in the litigation in question?

[32] I address each in turn.

VIII. ANALYSIS

A. Is Westbank a First Nation within the meaning of section 24 of the SCTA?

[33] The Tribunal has discretion under section 24 of the *SCTA* to grant claimant status in an existing claim before the Tribunal to a “First Nation” that has been issued a notice under subsection 22(1) of the *SCTA* (*Doig River* at para. 11; *Kwikwetlem First Nation v British Columbia (AG)*, 2021 BCCA 311 at para. 39, 461 DLR (4th) 357). Westbank was sent a section 22 Notice on August 9, 2024.

[34] Section 24 of the *SCTA* restricts party status to First Nations. The Tribunal may grant party status to a First Nation if it considers that the First Nation is a necessary or proper party.

[35] Section 2 of the *SCTA* defines a First Nation as follows:

First Nation means

- (a) a band as defined in subsection 2(1) of the *Indian Act*;
- (b) a group of persons that was, but is no longer, a band within the meaning of paragraph (a) and that has, under a land claims agreement, retained the right to bring a specific claim; and

(c) a group of persons that was a band within the meaning of paragraph (a), that is no longer a band by virtue of an Act or agreement mentioned in the schedule and that has not released its right to bring a specific claim.

[36] The definition of First Nation provided in section 2 of the *SCTA* is clear and unambiguous. It states that a First Nation is a “band” or, under certain clearly defined circumstances, a former band.

[37] Subsection 2(1) of the *Indian Act*, RSC 1985, c I-5, defines a “band” and an “Indian” as follows:

... **band** means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in [His] Majesty, have been set apart before, on or after September 4, 1951,

(b) for whose use and benefit in common, moneys are held by [His] Majesty, or

(c) declared by the Governor in Council to be a band for the purposes of this Act;

...

Indian means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian ...

[38] For reasons not relevant here, in the early 1960s a committee was struck to begin the process of dividing the Original Okanagan Band into two bands. On October 18, 1963, the Original Okanagan Band was divided into Westbank and Okanagan. A letter dated October 24, 1963, from the Acting Director of the Okanagan Agency to the Chief and Members of the Okanagan Indian Council stated that “[t]he Minister, therefore, in accordance with the powers conferred upon him under Section 17 of the *Indian Act*, has ordered that the group of Indians at Westbank be constituted a separate band with effect 18th October, 1963” (emphasis in original; affidavit of Jeniffer Bellingham at para. 15). Each was therefore a “band” within the meaning of subsection 2(1) of the *Indian Act*, RSC 1985, c I-5.

[39] In a letter dated March 17, 1964, a Senior Administrative Officer of Canada confirmed by enclosing a memorandum dated March 13, 1964, that Westbank was a separate “band” approved by the Minister on October 18, 1963, in accordance with the provisions of subsection 17(1) of the *Indian Act* (affidavit of Jeniffer Bellingham at para. 18).

[40] Since May 6, 2004, Westbank has been an autonomous, self-governing First Nation with a

Self-Government Agreement (*Westbank First Nation Self-Government Act*, SC 2004, c 17). Westbank is now a First Nation within the meaning of paragraph 2(c) of the *SCTA*. Importantly, the *Westbank First Nation Self-Government Act* is mentioned in the schedule to the *SCTA* so it has not released its right to bring a specific claim.

[41] Because Westbank is a First Nation within the meaning of section 24 of the *SCTA* that has been provided a section 22 Notice I have the discretion to grant Westbank status as a claimant in this Claim (*Doig River* at para. 27). The question is whether I should do so.

B. Does the relief, remedy or subject matter of this Claim give rise to a question or issue between Westbank and the Parties in this Claim?

[42] The issue of adding a party to a claim before the Tribunal was thoroughly reviewed in *Doig River*. The question or issue an applicant wishes to assert must relate to the relief, remedy or subject matter of the existing claim. It is not sufficient that a party has evidence relevant to the questions at issue, has an interest in a question involved in the claim, or has thought of relevant arguments to advance (*Doig River* at para. 25). Rather, the Tribunal held that a “necessary and proper party” within the meaning of section 24 of the *SCTA* is “one that must be added to enable the effective and complete adjudication of the matter” (*Doig River* at para. 23).

[43] In terms of whether the Applicant is a “necessary and proper party”, I find that the claims of Okanagan and Westbank are based on substantially the same facts and they both seek compensation related to the failure of Canada to amalgamate the Original Okanagan Band and the Arrow Lakes Band in the early 1950s. The specific claim brought by Okanagan arises from events that occurred before the Original Okanagan Band and Westbank split into two separate entities. Consequently, Okanagan and Westbank have virtually identical claims dating back to the 1950s when they were both part of the Original Okanagan Band.

[44] As demonstrated by Westbank, the subject matter of its claim gives rise to questions or issues between Westbank and the Parties in this Claim. Westbank has advised, through the affidavit of Jeniffer Bellingham, Director of Intergovernmental Affairs & Title and Rights of Westbank First Nation, that if it is added as a claimant it will file a Declaration of Claim similar to that filed by Okanagan. A draft of Westbank’s Declaration of Claim is attached to Jeniffer Bellingham’s affidavit as Exhibit “N”. Counsel for Westbank, in oral submissions before the

Tribunal on February 13, 2025, compared key points in the Okanagan Claim to Westbank's draft Declaration of Claim as follows:

- Okanagan pleads that on November 6, 1952, Okanagan issued a band council resolution consenting to the amalgamation of the Arrow Lakes Band with Okanagan. If granted status as a claimant, Westbank will plead that this band council resolution was issued by the Original Okanagan Band and that this band council resolution consented to the amalgamation of the Arrow Lakes Band with the Original Okanagan Band.
- Okanagan pleads that on April 17, 1953, the sole surviving member of the Arrow Lakes Band signed a statement consenting to the amalgamation of the Arrow Lakes Band with the "Okanagan Indian Band". If granted status as a claimant, Westbank will plead that this statement provided consent to the amalgamation of the Arrow Lakes Band with the Original Okanagan Band. Westbank will also plead that Westbank was part of the Original Okanagan Band and that it has standing in this Claim.
- Okanagan pleads that Canada owed legal obligations to Okanagan. If granted status as a claimant, Westbank will plead that these legal obligations were owed to the Original Okanagan Band.
- Okanagan pleads that Canada breached its legal obligations to Okanagan. If granted status as a claimant, Westbank will plead that Canada breached its legal obligations to the Original Okanagan Band.
- Okanagan pleads that Canada's breaches of its legal obligations deprived Okanagan of the Arrow Lake Reserve, the ongoing use and benefit of that reserve, and the capital funds in the Arrow Lakes Band account. If granted status as a claimant, Westbank will plead that Canada breached its legal obligations to the Original Okanagan Band and its lawful successors, Westbank and Okanagan.

[45] Counsel for Westbank noted in oral submissions that Westbank had accidentally used

Okanagan's Declaration of Claim filed on December 30, 2020, instead of Okanagan's Amended Declaration of Claim filed on June 1, 2023. Westbank will edit its Declaration of Claim to align more closely to Okanagan's Amended Declaration of Claim.

[46] Like Okanagan, if added as a party Westbank will seek a declaration that it has been deprived of the value and ongoing use and benefit of the Arrow Lake Reserve by virtue of Canada's breaches of its obligations to Westbank as one of the two successors of the Original Okanagan Band (Okanagan being the other successor). Moreover, in its Amended Declaration of Claim, Okanagan seeks damages and equitable compensation. If granted status as a claimant, Westbank will seek damages and equitable compensation on the same basis, to be allocated between Westbank and Okanagan.

[47] In both *Doig River* and *Birch Narrows*, the First Nation applying for party status had previously been part of the same band as the original claimant. In *Doig River*, the Fort St. John Beaver Band was the predecessor band to both the Doig River First Nation (the original claimant) and the Blueberry River First Nations (the First Nations applying for party status). In *Birch Narrows*, the Clear Lake Band was a predecessor band to both the Birch Narrows First Nation (the original claimant) and the Buffalo River Dene Nation (the First Nation applying for party status). In both proceedings, the claim of the applicant was similar, if not identical, to the case the claimant sought to advance. In both of these cases, the applicant was granted party status (*Doig River* at paras. 5, 15, 41; *Birch Narrows* at paras. 4, 6, 15, 18).

[48] As in *Doig River* and *Birch Narrows*, Okanagan and Westbank have virtually identical claims before the Tribunal. This is because the Claim dates back to the 1950s when Westbank was part of the Original Okanagan Band, before they became separate entities in the 1960s. Their claims are essentially the same and arise out of the same factual matrix. As one of the two successors to the Original Okanagan Band, Westbank is a necessary and proper claimant in these proceedings.

[49] I accept that Okanagan and Westbank's respective claims are based on the same facts and they both seek compensation related to the proposed amalgamation. I find that Westbank has satisfied this part of the two-step test.

C. Will adding Westbank be just and convenient to determine the issues in this Claim ?

1. General

[50] In terms of whether granting Westbank party status will be just and convenient, Westbank meets the relevant factors set out in decisions of the Tribunal. Those factors are as follows:

- a. whether adding the proposed party as a claimant is necessary to “yield a final and complete resolution” of the claim (*Doig River* at para. 35);
- b. whether adding the proposed party to the claim will delay the final resolution of the claim (*ᑭᐱᑭᐱᑭ v His Majesty the King in Right of Canada*, 2024 SCTC 4 at para. 71);
- c. whether adding the proposed party to the claim will cause undue complication (*Doig River* at para. 26);
- d. whether the proposed party may present a case discordant with the original claimant (*Birch Narrows* at para. 15);
- e. whether adding the proposed party to the claim will prejudice a party (*Doig River* at para. 26); and
- f. whether the proposed party has delayed coming forward (*Doig River* at para. 28).

2. Necessity

[51] I agree with Westbank that adding it as a claimant is necessary for the validity stage of the Claim. This case is analogous to *Doig River* where Doig River First Nation and Blueberry River First Nations were successors to the Fort St. John Beaver Band. The Fort St. John Beaver Band was divided into these two First Nations in 1977.

[52] Similarly, as a successor to the Original Okanagan Band, Westbank’s participation is required to ensure it is bound by the result in this Claim. As stated in *Canada (Fisheries and Oceans) v Shubenacadie Indian Band*, 2002 FCA 509 at para. 8, party status is necessary for the person or entity to be bound by the result:

What makes a person a necessary party? It is not, of course, merely that [they have] relevant evidence to give on some of the questions involved; that would only make [them] a necessary witness. It is not merely that [they have] 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 [they] 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 [they are] a party. [emphasis in original; citing *Amon v Raphael Tuck & Sons Ltd*, [1956] 1 QB 357 at p. 380]

[53] Bolstering the necessity of adding Westbank as a claimant is the fact that Westbank will contribute to the validity stage of the hearing. It has important oral history to share as well as transcripts of deceased members. As Jeniffer Bellingham deposed in her affidavit:

When reviewing Westbank’s archived documents, I found transcripts dated July and August 1990 of recorded interviews with Westbank and other elders recounting stories of Westbank family roots at Arrow Lakes. These interviews were conducted by Michelle Joe, a Westbank member and currently the Manager of Westbank’s Language and Culture/Heritage Department. Attached and marked as Exhibit “E” are the interview transcripts of Mary Eli, Delphine Derrickson, Jeannette Armstrong, and Louise Gabriel, dated July and August 1990.

On November 6, 2024, I attended a gathering where approximately twenty-six Westbank community members participated. During this gathering, I heard, and believe it to be true, members recount their family stories at Arrow Lakes, with specific reference to Annie Joseph, and their families' former residency at the Arrow Lakes reserve until being pushed out of Arrow Lakes. Some of those members referred to cassette tapes from the 1970s in need of digitization and transcription that include interviews with now deceased elders who told stories about Annie Joseph. Westbank would adduce the evidence from these members if it were added as a claimant to this proceeding. [paras. 12–13]

[54] This evidence which will be proffered at the hearing should Westbank be granted party status will contribute to the proceedings in a substantive and helpful way. Counsel for Westbank advised that it has five oral history witnesses that will be available for the hearing tentatively set in June 2025 (which now has been tentatively set in May 2025).

3. Delay in the Claim

[55] There is no concern that Westbank will materially delay the final resolution of the Claim. Westbank agrees with the bifurcation of the Claim and with bifurcation of its own claim, and Westbank states that it will fit within the schedule already proposed by the Parties and agreed to by the Tribunal. Its evidence will add some time to the proceedings including the testimony of witnesses, cross-examination of witnesses advanced by Canada, and its additional submissions. However, Westbank will work with the Parties to advance the procedural aspects of the Claim, and Westbank has to date been cooperative. Westbank will assist with the final and complete

resolution of the Claim by providing the full history of what happened in the 1950s following Annie Joseph's death.

4. Undue complication and discordance

[56] There is also no concern that adding Westbank will cause undue complication to the Claim. There is little concern that Westbank as a claimant will present a discordant case from that of Okanagan by advancing its individual interests over those required to decide the Claim. Like in *Doig River* and *Birch Narrows*, the narrative giving rise to the Westbank claim is identical to the narrative that gave rise to the Okanagan Claim. Since both First Nations rely on the same historical facts, the addition of Westbank as a party will avoid a multiplicity of proceedings.

[57] In my view, Westbank can offer a useful perspective on the issues advanced by Okanagan. Giving Westbank party status will assist in ensuring Westbank is bound by the validity decision. Moreover, if the Claimant is successful at the validity stage, Westbank's evidence will assist in determining how to allocate compensation.

5. Prejudice

[58] Canada is not prejudiced by Westbank being added as a party at this stage of the proceedings. Rather, Canada argues that adding Westbank as a claimant will better enable the proper adjudication of the Claim. If Westbank is not added, Canada could be prejudiced by facing a future claim based on the same facts and issues. A final and complete resolution of the Claim, with all of the interested entities involved, is the most efficient and cost-effective way of resolving the Claim.

6. Delay in filing an application

[59] Although Westbank did delay in advancing its interest in the Claim, it had a justification that was accepted by the Tribunal when it sent the second section 22 Notice. As Justice Grist stated in *Doig River*: "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" (footnotes omitted; para. 28).

[60] The discretion to add a party must be exercised in a manner that truly serves the interests

of justice in all of the circumstances. Not only did Westbank offer an explanation for its delay, since August 9, 2024, Westbank has acted without delay, attended all the case management conferences and has been fully compliant with the procedural needs of the Parties.

7. Conclusion

[61] Westbank’s Application is analogous to the situation in *Doig River* and *Birch Narrows*. Both Okanagan and Westbank were one First Nation at the time the issues in this Claim arose. As in *Doig River*, 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” (para. 9). Adding Westbank as a party will streamline the resolution of the Claim before me. More importantly, it will serve the interests of justice and the overall purpose and intent of the *SCTA*.

IX. DISPOSITION

[62] I grant Westbank’s Application for party status in this Claim. Westbank shall file its Declaration of Claim on or before **March 6, 2025**. The Respondent shall file its Response to Westbank’s Declaration of Claim on or before **March 13, 2025**.

[63] The Parties and the Applicant shall bear their own costs of this Application.

DIANE MACDONALD

Honourable Diane MacDonald

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

Date: 20250228

File No.: SCT-7004-20

OTTAWA, ONTARIO February 28, 2025

PRESENT: Honourable Diane MacDonald

BETWEEN:

OKANAGAN INDIAN BAND

Claimant (Respondent)

and

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

Respondent (Respondent)

and

WESTBANK FIRST NATION

Applicant

COUNSEL SHEET

**TO: Counsel for the Claimant (Respondent) OKANAGAN INDIAN BAND
As represented by Kelsey Rose
JFK Law LLP**

AND TO: Counsel for the Respondent (Respondent)

As represented by Monina Glowacki
Department of Justice

AND TO: **Counsel for the Applicant WESTBANK FIRST NATION**
As represented by Christopher Devlin
Sequoia Legal LLP