FILE NO.: SCT-2001-19
CITATION: 2025 SCTC 3
DATE: 20250520

OFFICIAL TRANSLATION

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:	
PEKUAKAMIULNUATSH FIRST NATION Claimant (Respondent)	Benoît Amyot and Léonie Boutin, for the Claimant (Respondent)
– and –	
HIS MAJESTY THE KING IN RIGHT OF CANADA As represented by the Minister of Crown-Indigenous Relations Respondent (Respondent)	Mélyne Félix, Kateri Vincent and Marie-Emmanuelle Laplante, for the Respondent (Respondent)
– and –	
CANADIAN NATIONAL RAILWAY COMPANY Applicant	Emil Vidrascu and Alexandre-Philippe Avard, for the Applicant
	HEARD: via written submissions

REASONS ON APPLICATION

Honourable Danie Roy

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

Cases Cited:

Siska Indian Band v Her Majesty the Queen in Right of Canada, 2018 SCTC 2; *Carter v Canada (AG)*, 2012 BCCA 502; *Metlakatla Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 4; *Ahousaht Indian Band v Canada (AG)*, 2012 BCCA 330, [2012] CNLR 24; *Okanagan Indian Band v His Majesty the King in Right of Canada*, 2024 SCTC 2; *Cook's Ferry Indian Band v His Majesty the King in Right of Canada*, 2023 SCTC 2.

Statutes and Regulations Cited:

Specific Claims Tribunal Act, SC 2008, c 22, ss 3, 20, 21, 22, 25.

Federal Courts Rules, SOR/98-106, r 221.

TABLE OF CONTENTS

I. INTRODUCTION

[1] This is an Application for Leave and Notice of Application (Application) by the Canadian National Railway Company (CN or the Applicant) for intervenor status in the Pekuakamiulnuatsh First Nation (the Claimant) Claim currently before the Specific Claims Tribunal (Tribunal). The Application arose out of a notice pursuant to section 22 of the *Specific Claims Tribunal Act*, SC 2008, c 22 [*SCTA*], issued to CN on February 4, 2025.

[2] In this Claim, the Claimant alleges a number of breaches of legal and fiduciary obligations by the Crown in connection with the disposition of reserve land for the purpose of constructing and operating the James Bay and Eastern Railway Company. The Crown admits that it breached its legal obligations in respect of the Pekuakamiulnuatsh First Nation's repurchase of land in 1968, but denies all the other allegations made by the Claimant. CN, as successor to the rights of the James Bay and Eastern Railway Company, is seeking to intervene mainly to submit that the Tribunal lacks jurisdiction to define its property rights or to rule on how the Respondent has characterized its property rights in this Claim.

II. APPLICANT'S POSITION

[3] The Applicant is seeking leave to intervene in order to make two related arguments. First, it submits that the Crown—in its Further Amended Response to the Further Amended Declaration of Claim—is attempting to [TRANSLATION] "rewrite history" by characterizing CN's property interest in the reserve as a [TRANSLATION] "railway right-of-way" rather than as the [TRANSLATION] "full property rights" the Applicant claims to have acquired for the area (Application at paras. 6–7). Second, the Applicant argues that the Tribunal lacks the jurisdiction to determine the [TRANSLATION] "validity and scope" of third-party property rights in the context of a specific claim (Application at para. 13).

[4] CN also submits that [TRANSLATION] "the general scheme of the 1906 *Railway Act* presumed that railway companies fully owned and exclusively controlled their railway rights-of-way" since the expropriation of private land for railway purposes [TRANSLATION] "was normally presumed to vest full ownership" in the railway company (Application at para. 29).

[5] According to the Applicant, full ownership is only limited by the restriction on alienation

contained in the *Railway Act*, under which the land [TRANSLATION] "must, when the railway is completed, be returned to the Crown for the benefit of the Pekuakamiulnuatsh First Nation" (note omitted; Application at para. 33). This situation creates property rights that CN characterizes as being [TRANSLATION] "[analogous] to an absolute surrender", albeit a [TRANSLATION] "temporary" and [TRANSLATION] "conditional" one (Application at para. 34).

[6] As for the Tribunal's jurisdiction, CN submits that the *SCTA* [TRANSLATION] "preserves the land rights of third parties" because the [TRANSLATION] "situation giving rise to the specific claim is regularized and the status quo is preserved" when, under section 21, compensation is awarded for unlawful disposition (Application at para. 15). Section 21 of the *SCTA* reads as follows:

> **Unlawful disposition**
>
> **21 (1)** If compensation is awarded under this Act for an unlawful disposition of all of the interests or rights of a claimant in or to land and the interests or rights have never been restored to the claimant, then all of the claimant's interests in and rights to the land are released, without prejudice to any right of the claimant to bring any proceeding related to that unlawful disposition against a province that is not a party to the specific claim.
>
> **Unlawful disposition of partial interest**
>
> **(2)** If compensation is awarded under this Act for the unlawful disposition of a partial interest or right of a claimant in or to reserve land, then the persons who, if the disposition had been lawful, would have had the partial interest or right in or to the land are deemed to have had that interest or right.

[7] Moreover, the Applicant submits that, to decide whether a claim is valid or whether to award compensation, the Tribunal is not required to determine [TRANSLATION] "the nature and extent of third-party rights" since any monetary compensation awarded by the Tribunal is based on the value of bare land and not any specific rights or interests that may have existed on the land in question (Application at para. 17). CN refers to *Siska Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 2 [*Siska*], which also involved reserve land taken for railway purposes. In that case, Slade J. held that there was "no need to consider what form of tenure, if any, was lawfully conveyed to the [Canadian Pacific Railway] Company" since the form of tenure held by the railway company was not at issue, the only issue being the Crown's decision making (*Siska* at paras. 150–51).

[8] Ultimately, relying on both the *SCTA* and the Tribunal's case law, CN concludes that, in

ruling on a claim, the Tribunal [TRANSLATION] "need not—and cannot—interfere in the contractual relations between the Crown and third parties" or [TRANSLATION] "definitively determine" the nature and extent of a third party's property rights (Application at para. 22). According to the Applicant, doing so [TRANSLATION] "could broaden the scope of the proceedings significantly . . . to the detriment of the objectives of reconciliation and settlement" (Application at para. 25).

III. POSITIONS OF THE PARTIES

A. Claimant's position

[9] The Claimant submits that the Application should be dismissed on the ground that CN lacks a direct interest in the Claim.

[10] It argues that the Claim concerns a dispute between a First Nation and the Crown, and that any property rights CN may have do not have to be determined here (Claimant's written submissions at para. 16). The Claimant even adds that it [TRANSLATION] "is not part of the Specific Claims Tribunal's mandate to resolve disputes between the Crown and third parties, but to compensate First Nations for faults committed against them by the Crown" (Claimant's written submissions at para. 19).

[11] According to the Claimant, the issue at the heart of this Claim is quite different from the issue concerning CN. In that regard, it submits that the Tribunal is an [TRANSLATION] "inappropriate vehicle" to [TRANSLATION] "resolve the dispute" between CN and the Crown on the nature of the property rights held by CN (Claimant's written submissions at para. 20). Should CN consider it necessary to clarify this matter, it should [TRANSLATION] "initiate proceedings before the appropriate court or tribunal to regularize the status of the land in a manner that is consistent with its current position" (Claimant's written submissions at para. 20).

[12] The Claimant seems to share CN's view that the Tribunal lacks jurisdiction to resolve the issue of CN's property rights, noting that [TRANSLATION] "the Tribunal's decision will not directly affect the [Applicant's] rights" (Claimant's written submissions at para. 21).

[13] It further notes that allowing the intervention would prejudice the Pekuakamiulnuatsh First Nation by [TRANSLATION] "[introducing] a new issue into the dispute, which is already complex

enough" (Claimant's written submissions at para. 27). The Pekuakamiulnuatsh First Nation would be further prejudiced by the fact that a review of this new issue would result in additional costs in connection with the ongoing proceedings, which [TRANSLATION] "are already proving quite [costly] given the complexity and historical nature of the dispute".

[14] Finally, should the Application nonetheless be allowed, the Claimant asks that CN's participation be limited, particularly at the oral history evidence hearing. It objects to CN cross-examining Elder witnesses on the ground that [TRANSLATION] "the nature and extent of the property rights granted by the Respondent to the [Applicant] is a question of law that has nothing to do with the testimonies" to be given at the hearing (Claimant's written submissions at para. 34). It also notes that CN did not participate in preparing the protocol governing the testimony of Elders or agree to be bound by it, and expresses concerns that CN's participation in the cross-examinations could dissuade some witnesses from appearing or undermine their willingness to testify (Claimant's written submissions at paras. 35–36).

B. Respondent's position

[15] The Respondent submits that CN has a direct interest in the Claim and states that it [TRANSLATION] "does not object" to the Application (Respondent's written submissions at para. 2). It asks, however, that CN's participation be subject to certain conditions.

[16] According to the Respondent, CN's participation is relevant as, in examining whether the Claim is valid, the Tribunal will [TRANSLATION] "have to determine the nature of the rights in Mashteuiatsh reserve land conferred on the [James Bay and Eastern Railway Company] in 1911" (Respondent's written submissions at para. 32). Given that the Tribunal will inevitably have to determine the nature of CN's rights, the Applicant's participation would [TRANSLATION] "provide additional [useful] insight" to [TRANSLATION] "allow the Tribunal to resolve this issue" (Respondent's written submissions at para. 5).

[17] Even though the Respondent does not object to the Application, it suggests that CN's participation be governed by certain conditions so that it [TRANSLATION] "[helps the Tribunal] to rule on the Claim without compromising it" (Respondent's written submissions at para. 43). It therefore asks that CN only make [TRANSLATION] brief "written submissions" that are strictly limited to the issue of its property rights (Respondent's written submissions at subpara. 56(a)). It

is also seeking an order compelling CN to apply for leave should it wish to produce evidence or cross-examine the Respondent's witnesses (Respondent's written submissions at para. 56). For the Claimant's witnesses, including the Elders who will be called to testify at the oral history evidence hearing, the Respondent defers to the Tribunal's discretion (Respondent's written submissions at para. 49).

[18] Finally, the Respondent asks that some allegations against the Crown in CN's Application be struck out as it finds them to be [TRANSLATION] "vexatious and unfounded", in accordance with paragraphs 221(1)(b) and (c) of the *Federal Courts Rules*, SOR/98-106, which provide as follows:

> **Motion to strike**
>
> **221 (1)** On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it
>
> . . .
>
> **(b)** is immaterial or redundant,
>
> **(c)** is scandalous, frivolous or vexatious, . . .

[19] The Respondent refers specifically to paragraphs 6, 7, 8, 9, 36 and 40 of the Application and notes that it is ready to make a formal application to this effect to the Tribunal.

IV. TRIBUNAL'S APPROACH TO INTERVENTIONS

[20] In accordance with section 25 of the *SCTA*, the Tribunal may authorize an intervention if an applicant proves that it fulfills the conditions set out in that provision:

> **Intervention by persons affected**
>
> **25 (1)** A First Nation or person to whom notice under subsection 22(1) is provided may, with leave of the Tribunal, intervene before it, to make representations relevant to the proceedings in respect of any matter that affects the First Nation or person.
>
> **Factors**
>
> **(2)** In exercising its discretion under subsection (1), the Tribunal shall consider all relevant factors, including the effect that granting intervenor status would have on the cost and length of the hearing.

[21] The Tribunal takes a traditional judicial approach to interventions. Before a court, intervention will generally be permitted in two situations: when a proposed intervenor has a direct interest in the litigation or when the litigation raises public law issues that legitimately engage the

proposed intervenor's interests and the proposed intervenor brings a different and useful perspective to those issues that will be of assistance in resolving them (*Carter v Canada (AG)*, 2012 BCCA 502 at paras. 12–13 [*Carter*]). In this case, neither the Parties nor the Applicant submits that this case raises a public law issue.

[22] The Tribunal has employed various approaches to dispose of applications to intervene; however, these approaches have mainly been concerned with how to interpret "direct interest", a concept it has consistently interpreted narrowly.

[23] For example, in *Metlakatla Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 4, the Tribunal relied on *Carter* and *Ahousaht Indian Band v Canada (AG)*, 2012 BCCA 330, [2012] CNLR 24 [*Ahousaht*], which reflect a rather narrow approach to direct interest. In *Carter*, the Court of Appeal for British Columbia explained that a proposed intervenor must establish that "the result of the appeal will directly affect its legal rights or impose on it some additional legal obligation with a direct prejudicial effect" (at para. 12). In *Ahousaht*, the same court adopted an even narrower approach, holding that a proposed intervenor must demonstrate that the decision "will directly determine his, her, or its rights or liabilities" (emphasis added; at para. 3). The court further clarified that the fact that a decision would have "some effect" on the proposed intervenor's legal position "does not constitute a direct interest".

[24] Similarly, in *Okanagan Indian Band v His Majesty the King in Right of Canada*, 2024 SCTC 2, MacDonald J. stated that for a direct interest intervention to be admissible, the Tribunal "must be satisfied that the factual or legal issues under consideration will have a real impact on the proposed intervenor" (at para. 78). According to *Cook's Ferry Indian Band v His Majesty the King in Right of Canada*, 2023 SCTC 2, the Tribunal—and the courts—have generally demanded that "the proposed intervenor's issues hew closely to those already being considered by the adjudicator" (at para. 39).

V. ANALYSIS

[25] The Tribunal's mandate is to "decide issues of validity and compensation relating to specific claims of First Nations" (*SCTA*, section 3). The Tribunal does not have the authority to resolve property disputes between a company and the Government of Canada.

[26] The Claim concerns the property rights the Crown allegedly took away from the Claimant, the Pekuakamiulnuatsh First Nation, and the issue of whether this taking is a breach of the Crown's legal and fiduciary obligations towards the Claimant. The nature of the property rights the Crown subsequently granted to the James Bay and Eastern Railway Company—and, ultimately, to CN—is irrelevant to the Tribunal. CN therefore has no direct interest in the Claim.

[27] Moreover, I agree with CN's position on the Tribunal's jurisdiction in respect of third-party property rights: the Tribunal lacks the jurisdiction to rule on such rights. Under section 21 of the *SCTA*, if the Tribunal awards compensation regarding a parcel of land, the legal relationships relating to that land are regularized and the status quo is preserved. The Tribunal lacks jurisdiction to award land as compensation; under paragraph 20(1)(a) of the *SCTA*, its jurisdiction is limited to awarding monetary compensation for specific claims it has found to be valid.

[28] In its written submissions in reply, CN has written as follows:

> [TRANSLATION]
> To the extent that the Tribunal now confirms **(i)** that it lacks jurisdiction to determine the exact extent of the [Applicant's] property rights over the railway right-of-way, and **(ii)** that a future decision on the merits of the specific claim will not affect the [Applicant's] rights in a potential debate on those rights before the appropriate forum, the [Applicant] will not insist on being granted intervenor status in this case. [Emphasis in original; at para. 8]

[29] Given that the Tribunal lacks jurisdiction to determine the nature of CN's property rights, nothing justifies hearing submissions and examining witnesses on this issue.

[30] Also, allowing the Applicant to intervene would prejudice the Parties, especially the Claimant. The issues raised in CN's Application are superfluous in respect of those set out in the Declaration of Claim. Allowing this intervention would inevitably expand the scope of this proceeding beyond what is actually at stake. Such an expansion would require both the Claimant and the Respondent to undertake additional research, gather new evidence and make further legal arguments to respond to the Applicant's position. This situation would result in delays and, potentially, significant extra costs. It could also mean having to postpone the oral history evidence hearing, thereby increasing the risk of crucial evidence being lost if Elders of the Pekuakamiulnuatsh First Nation who were originally supposed to testify would no longer be able to testify at a later date.

VI. CONCLUSION

[31] Having considered the arguments raised by the Applicant and by the Parties, and for the reasons set out above, I dismiss the Application as the Applicant did not adequately demonstrate its direct interest in the proceeding.

[32] Since I have dismissed the Application, I do not have to rule on the Respondent's potential application to strike.

[33] No costs are awarded in the Application.

DANIE ROY

Honourable Danie Roy

Certified true translation
Johanna Kratz

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20250520

File No.: SCT-2001-19

OTTAWA, ONTARIO, May 20, 2025

PRESENT: Honourable Danie Roy

BETWEEN:

PEKUAKAMIULNUASTH FIRST NATION

Claimant (Respondent)

and

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

Respondent (Respondent)

and

CANADIAN NATIONAL RAILWAY COMPANY

Applicant

COUNSEL SHEET

TO: **Counsel for the Claimant PEKUAKAMIULNUATSH FIRST NATION**
As represented by Benoît Amyot and Léonie Boutin
Cain Lamarre

AND TO: **Counsel for the Respondent (Respondent)**
As represented by Mélyne Félix, Kateri Vincent and Marie-Emmanuelle Laplante
Department of Justice

AND TO: **Counsel for the Applicant**
As represented by Emil Vidrascu and Alexandre-Philippe Avard
Dentons Canada, LLP