SCT File No.: SCT - 5001-11

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

BEARDY'S & OKEMASIS BAND #96 AND #97

Claimant
(Respondent)

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
as represented by the Minister of Aboriginal Affairs and Northern Development Canada

Respondent
(Applicant)

RESPONSE TO APPLICATION FOR LEAVE TO INTERVENE
PURSUANT TO RULE 35 OF THE
SPECIFIC CLAIMS TRIBUNAL RULES OF PRACTICE AND PROCEDURE

This Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

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Attention: Daniel J. Kuhlen

I. Response to Application for Leave to Intervene

1. The Beardy's & Okemasis Band #96 and #97 (the "First Nation"), respectfully opposes the Application for leave to intervene brought by the Première Nation des Atikamekw d'Opitciwan ("the Applicant") on the grounds that such intervention would interfere with the timely and effective resolution of the matter and because the Applicant will not be direct affected by a decision of the Tribunal in relation to the Claimant's claim for an alleged unlawful termination of Treaty annuities by the Crown.

II. Nature of the Issues to be Assessed in the Application to Strike

2. The narrow issue to be decided in Canada's Application to Strike relates to the characterization of the nature of the Treaty 6 right to annuity payments, specifically, whether this treaty right belongs to the First Nation as a whole, or to individuals.

III. Nature of the Applicant's Interest in the Outcome of the Application to Strike

3. The Applicant's interest in this Application to Strike ostensibly relates to claims before the Tribunal for flood losses suffered by Atikamekw d'Opitciwan in a non-treaty context. The Applicant takes issue with the Crown's arguments that losses they suffered are "individual assets," and wish to advance their particular claims through the present proceedings for the Application to Strike against the Respondent.[1]

IV. The Law

4. The main principles respecting intervention are set out in the *Specific Claims Tribunal Rules of Practice and Procedure* (the "Rules"), the *Specific Claims Tribunal Act* (the "Act"), and the Federal Court jurisprudence which is instructive.

5. Under the Act and the Rules, an applicant for leave to intervene must show "how their participation could assist the Tribunal in resolving the issues in relation to the specific claim,"[2] and requires that the prospective intervenor "make representations *relevant to the proceedings* in respect of any matter that affects the First Nation or person."[3]

6. In exercising its discretion with respect to granting an Application for Leave to Intervene, the Act requires that the Tribunal "consider all relevant factors, including the effect that granting intervenor status would have on the cost and length of the hearing."[4]

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[1] *Application for Leave to Intervene*, paragraph 9.

[2] Section 45(b) of the Rules.

[3] Section 25(1) of the Act, emphasis added.

[4] *Ibid*.

7. Additionally, the Federal Court jurisprudence suggests a number of other factors that may be considered in the assessment of whether or not to grant an Application for Leave to Intervene. This often-cited list of factors, recently affirmed by the Federal Court of Appeal in *Amnesty Int. Can. v. Canada*, 2008 FCA 257, is as follows:

> 1) Is the proposed intervener directly affected by the outcome?
> 2) Does there exist a justiciable issue and a verifiable public interest?
> 3) Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
> 4) Is the position of the proposed intervener adequately defended by one of the parties to the case?
> 5) Are the interests of justice better served by the intervention of the proposed third party?
> 6) Can the Court hear and decide the cause on its merits without the proposed intervener?[5]

V. Resolving the Issues in Relation to the Specific Claim

8. It is respectfully submitted that the participation of the Applicant would not assist the Tribunal in resolving issues related to the present claim and that the Applicant will not be directly affected by the outcome of Canada's Application to Strike.

9. As indicated above, the Tribunal's hearing of Canada's Application to Strike will determine the limited issue of whether the right to receive annuity payments enshrined in the text of Treaty 6 is collective or individual in nature, the answer to which will determine whether the Tribunal has the jurisdiction to adjudicate the First Nation's specific claim.

10. Both Canada's Application to Strike and the First Nation's Response thereto specifically and exclusively examine the nature of the treaty right to receive annuity payments pursuant to the terms of Treaty 6.

11. The Applicant First Nation is not a signatory to Treaty 6 (nor to any other treaty) and is not entitled to any annuity payments from the Crown, and as stated in its Application for Leave to Intervene, the Applicant "does not intend to make representations on the question of annuities."[6]

12. Rather, the Applicant intervenes primarily to dispute the interpretation of section 14(1) of the Specific Claims Tribunal Act, arguing that "the legislator did not have the intention... to limit the Tribunal's jurisdiction to losses stemming from assets held in common by a First Nation." They contend that the broad issue of whether the Tribunal

[5] *Amnesty Int. Can. v. Canada*, 2008 FCA 257, at para. 2

[6] *Application for Leave to Intervene*, paragraph 15.

may consider claims arising from a breach of individual rights must be resolved in order to reach a conclusion on the main issue of whether the Tribunal has jurisdiction to adjudicate a claim stemming from the Crown's unlawful termination of treaty annuity payments.[7]

13. As neither Canada's Application to Strike nor the First Nation's Response make any submissions respecting the collective versus individual nature of any other treaty or Aboriginal rights, and neither party has proffered any submissions as to whether or not the Act imbues the Tribunal with the jurisdiction to adjudicate claims arising from a breach of individual rights, there is a real danger that the introduction of such arguments by the Applicant would unduly complicate the proceedings by greatly expanding their limited scope, and that this would likely result in increased time and costs to the significant prejudice of the First Nation.

14. It should also be noted that the Application for Leave to Intervene was not submitted in a timely manner, and that with the Tribunal's long-awaited hearing date fast approaching, the addition of a new intervenor at this late stage in the process is not appropriate because it is likely to result in further delays, costs, and complexity.

15. In this context, the expansive arguments proposed by the Applicant do not constitute a "useful intervention," and while it is conceded that the Applicant's submissions do bring a "different perspective" to the issues, it is respectfully submitted that this is because it proposes to introduce issues that are well beyond the scope of the present claim. It is established that "while an intervenor may bring new viewpoints and special knowledge to a proceeding, the intervenor may not litigate new issues."[8]

VI. The Applicant's Interest in the Outcome of the Proceedings

16. As discussed above, the First Nation submits that the Applicant has no direct interest in issues or the outcome of hearing that assesses the limited issue of whether the treaty right to receive annuity payments is a collective or individual right.

17. Any precedent set by this decision is unlikely to be directly applicable to any of the Atikamekw d'Opitciwan's specific claims that are currently before the Tribunal, and will likely have limited precedential value to claims asserted by other First Nations outside of a treaty context. The Applicant is not an adherent to Treaty 6, nor to any other treaty containing similar or analogous rights.

[7] *Application for Leave to Intervene*, paragraph 11.

[8] *Maurice v. Canada (Minister of Indian Affairs & Northern Development)*, [2000] F.C.J. No. 208, at para. 11.

18. Rather, it is submitted that at most, the Applicant's interest in the outcome of the Application to Strike can be categorized as "jurisprudential," and it the Federal Court of Appeal is clear that that such an interest is not sufficient to justify the granting of intervenor status.[9]

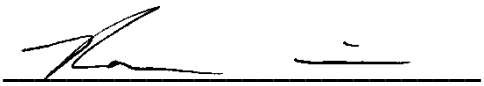
VII. Conclusions and Relief Sought

19. For the foregoing reasons, the First Nation respectfully submits that the interests of the Applicant will not be prejudiced by a refusal to grant the relief sought, and the Applicant has not satisfied the requirements of the Act, the Rules nor the Federal court jurisprudence to be successful in its Application for Leave to Intervene.

20. As such, the Respondent respectfully requests that the Tribunal exercise its discretion to not grant the Application for Leave to Intervene at this time.

Dated this 1st day of June, 2012.

MAURICE LAW



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[9] See: *Anderson v. Canada Customs and Revenue Agency*, 2003 FCA 352, at paragraph 6 where the court states: "It has also been established that intervention should not be permitted where the sole interest of the proposed intervener is jurisprudential in nature, in the sense that the outcome of the case may have repercussions in another case."