

SPECIFIC CLAIMS TRIBUNAL

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F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
	February 1, 2016	
	David Burnside	
Ottawa, ON		22

B E T W E E N:

SHOAL LAKE NO.40 FIRST NATION

Claimant

v.

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

Respondent

-and-

ISKATEWIZAAGEGAN NO. 39 INDEPENDENT FIRST NATION

Applicant

**CLAIMANT'S REPLY TO CANADA'S RESPONSE TO THE
APPLICATION FOR INTERVENOR STATUS BY
ISKATEWIZAAGEGAN NO. 39 INDEPENDENT FIRST NATION**

CLAIMANT'S REPLY

1. Shoal Lake #40 First Nation (the "Claimant") provides this Reply to the Response to the Application for Intervenor Status (the "Response") submitted by Canada (the "Respondent") in respect of SCT File No. SCT-3001-14 (the "Claim").
2. The Claimant submits that the sole issue to be decided by the Tribunal on this Application is whether Iskatewizaagegan No. 39 Independent First Nation (the "Applicant") should be granted intervenor status in the Claim. The issue of whether the Applicant should be added to the Claim as a co-claimant can only be decided on an application for party status brought by the Applicant.

a. The Applicant's status as co-claimant cannot be decided on this Application

3. By its Response dated November 27, 2015 the Respondent advised the Tribunal that it did not consent to the Applicant's request to be added to the Claim as an intervenor and that the Applicant should instead submit an application for co-claimant status.
4. The Response is in effect an application for an order that the Applicant apply to be added as a party to the Claim.
5. The Claimant submits that no decision can be made with respect to the Applicant's status as co-claimant without a proper application before the Tribunal in accordance with the *Specific Claims Tribunal Act*¹ and an opportunity for all parties to respond.
6. The Application before the Tribunal is for the addition of the Applicant as an intervenor. The parties to the Claim were provided with a right to respond to the issue raised in the Application in accordance with the Act and the direction of this

¹ *Specific Claims Tribunal Act*, SC 2008, c 22 [the "Act"]

Tribunal. As such, the only issue to be decided on this Application is whether the Applicant's request for intervenor status should be granted.

b. The Tribunal does not have jurisdiction to order an application for party status

7. There is no provision in the Act by which the Tribunal can add a First Nation as a party or otherwise order a First Nation to submit an application for party status absent an application by the First Nation.
8. Section 24 of the Act provides that 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.”²
9. On May 19, 2015, the Tribunal issued a notice pursuant to section 22(1) of the Act advising the Applicant that a decision in the Claim had the potential to significantly affect the Applicant's interests.
10. On October 21, 2015, the Applicant submitted its Application to participate in the Claim as an intervenor pursuant to section 25(1) of the Act.
11. In the Claim now before the Tribunal the Applicant did not submit an application for party status pursuant to section 24. As such the issue cannot be decided on this Application.

c. The Respondent relies on an incorrect test for intervenor status

12. The Respondent's submission that the Applicant should participate as a party rather than an intervenor is based on an incorrect test for intervenor status.
13. The Respondent argues that the Applicant should not be granted intervenor status because the Claim could directly affect the Applicant. The Claimant takes no position on whether the Applicant will be directly affected by the proceeding.

² Act, section 24 (emphasis added)

14. Contrary to the Respondent's submissions, there are no provisions in the Act which preclude persons who may be directly affected by a decision in a Claim from intervening before the Tribunal.
15. The Act provides that if the Tribunal notifies a First Nation that a claim might "significantly affect" the interests of a First Nation, the First Nation may choose to apply to the Tribunal to participate in the claim either as a party pursuant to section 24 or as an intervenor pursuant to section 25. In the Claim before the Tribunal the Applicant chose the latter.
16. Furthermore, Courts have repeatedly confirmed that the first factor to be considered on an application for intervenor status is whether the proposed intervenor stands to be "directly affected" by the outcome of a proceeding.³ The Respondent's submission that the Applicant's interests may be directly affected by the Claim weigh in favour of the Applicant's request for intervenor status, not against it.
17. The Claimant seeks costs against the Respondent on this Application on a substantial indemnity basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

February 1, 2016.



Bruce McIvor
FIRST PEOPLES LAW CORPORATION
300-111 Water Street
Vancouver, BC V6B 1A7
Tel: 604.685.4240
Solicitors for the Claimant



Kathryn Gunn
FIRST PEOPLES LAW CORPORATION
300-111 Water Street
Vancouver, BC V6B 1A7
Tel: 604.685.4240
Solicitors for the Claimant

³ See for example *Canadian Airlines International Ltd. v. Canada (Human Rights Commission)* (F.C.A.), [2010] 1 FCR 226, 2000 CanLII 28285 (FCA) at para 8

List of Authorities

Canadian Airlines International Ltd. v. Canada (Human Rights Commission) (F.C.A.),
[2010] 1 FCR 226, 2000 CanLII 28285 (FCA)

Specific Claims Tribunal Act, SC 2008, c 22