

SCT File No.: SCT-3001-14

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SHOAL LAKE #40 FIRST NATION

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	D É P O S É
March 1, 2016	
David Burnside	
Ottawa, ON	27

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indian Affairs and Northern Development

Respondent

-and-

ISKATEWIZAAGEGAN NO.39 INDEPENDENT FIRST NATION

Applicant

APPLICATION FOR LEAVE AND APPLICATION FOR PARTY STATUS
Pursuant to Section 24 of the
Specific Claims Tribunal Act and Rules **29, 30, 31**, and 34 of the *Specific Claims Tribunal Rules of Practice and Procedure*

TO: SHOAL LAKE #40 FIRST NATION

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AND TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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APPLICATION FOR PARTY STATUS

I. RELIEF SOUGHT

TAKE NOTICE than an application will be made on behalf of the Applicant, the ISKATEWIZAAGEGAN N0.39 INDEPENDENT FIRST NATION ("Iskatewizaagegan"), before the Specific Claims Tribunal (the "Tribunal"), at a time and place to be determined by the Tribunal, for the following relief:

- a) An order that the Applicant be granted party status in the *Shoal Lake #40 First Nation v. Her Majesty the Queen in Right of Canada* (SCT-3001 -14) (the "Claim") pursuant to Section 24 of the Specific Claims Tribunal Act (the "Act"), and thereby file a Declaration of Claim.

II. GROUNDS

TAKE NOTICE that this Application is brought on the following grounds:

1. The Shoal Lake #40 First Nation asserts in its Declaration of Claim dated October 30, 2014 that Canada breached and failed to fulfill its treaty and legal obligations, as well

as its fiduciary duty, to the Shoal Lake #40 First Nation by failing to set aside as reserve lands certain islands (the "Garden Islands") that Shoal Lake #40 First Nation had used as gardens at the time of Treaty #3.

2. The Shoal Lake #40 First Nation further asserts in the Claim that Canada also breached and failed to fulfill its treaty and legal obligations, as well as its fiduciary duty, to the Shoal Lake #40 First Nation in failing to protect the Garden Islands from expropriation and exploitation.
3. Canada's Response to the Shoal Lake #40 First Nation's Claim dated January 27, 2016 states, amongst other assertions, that the Crown had a treaty obligation to set aside as reserve for the Shoal Lake #40 First Nation and Iskwewizaaegagan the Garden Islands. Canada further asserts that Iskwewizaaegagan an interest in and holds the Garden Islands in common with the Shoal Lake #40 First Nation.
4. In a letter dated March 16, 2015, the Chief of Iskwewizaaegagan requested that pursuant to s. 22(1) of the *Specific Claims Tribunal Act*, that Iskwewizaaegagan be provided with notice that its interests to the Garden Islands will be significantly affected by a decision of the Tribunal in the Claim.
5. On May 19, 2015, the Tribunal provided Iskwewizaaegagan with notice regarding party or intervenor status pursuant to s.22 (1) of the *Specific Claims Tribunal Act* and Rules 49 (1)(e) and 49 (2)(g) of the *Specific Claims Tribunal Rules of Practice and Procedure* indicating that a decision in this matter may, in the opinion of the Tribunal, significantly affect the legal interests of Iskwewizaaegagan. In such notice, Iskwewizaaegagan was provided with a sixty (60) day limitation period to submit an application for party or intervenor status to the Tribunal.
6. In an Application dated October 21, 2016, Iskwewizaaegagan requested that it be provided with intervenor status to allow for it to present evidence and legal arguments to support Shoal Lake #40 First Nation's Claim, and to assist the Tribunal in

resolving the issues in the Claim. Both the Shoal Lake #40 First Nation and Canada consented for Iskatewizaagegan to submit such an Application.

7. In a Response dated November 27, 2015, Canada objected to Iskatewizaagegan request to be added as an intervenor as it felt that Iskatewizaagegan was a necessary and proper party to the Claim and should not be allowed to act as an intervenor.
8. In a Reply to Canada's Response dated January 29, 2016, Iskatewizaagegan stated that although its choice to participate in the Claim should be respected as a part of the reconciliation process between the Nations of Indigenous Peoples and Canada, upon community consultation and discussion that it would be in Iskatewizaagegan's best interests to make an application for party status as opposed to intervenor status.
9. In a Reply to Canada's Response dated February 1, 2016, the Shoal Lake #40 First Nation asserted that Canada's Response was in fact an application for an Order that Iskatewizaagegan be added as a party to the Claim, and that such an order is outside the confines of the Tribunal's ability pursuant to the *Specific Claims Tribunal Act*. Accordingly, the Shoal Lake #40 First Nation asserted that absent an Application submitted by Iskatewizaagegan to be added as a party, Canada's request within its Response could not stand.
10. In an Endorsement dated February 24, 2016, after a Case Management Conference on the same date, the Tribunal granted leave to Iskatewizaagegan to submit an Application for Party Status, to be filed on or before March 1, 2016, with the Shoal Lake #40 First Nation directed to file its Response to the Application on or before March 9, 2016. The Parties were further directed to advise the Tribunal by March 15, 2016 if a hearing of oral submissions was necessary for the Tribunal to decide the Application.
11. Iskatewizaagegan submits that under Treaty #3, to which it is a party, the Crown promised to set aside as reserve lands those lands that it had utilized for agricultural

purposes prior to, and at the time of Treaty #3. The Garden Islands identified in the Claims are such lands used by Iskatewizaagegan for agricultural purposes prior to, and at the time of Treaty #3.

12. Iskatewizaagegan submits that the Crown failed to honour its promise to set aside as reserve lands the Garden Islands, and as a result, breached its treaty, legal and fiduciary obligations to Iskatewizaagegan in regards to the Garden Islands.

13. Iskatewizaagegan further submits that the Crown failed to protect its rights and interests to the Garden Islands.

14. Based on all of the above, Iskatewizaagegan submits for the purpose of this Application that:

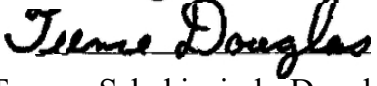
- a. it has interests and rights to the same Garden Islands as set out in the Shoal Lake #40 First Nation's Claim;
- b. a decision by the Tribunal in the Claim will significantly affect Iskatewizaagegan's interests and rights to the Garden Islands;
- c. that it is a necessary and proper party to the Claim pursuant to s.24 of the *Specific Claims Tribunal Act*; and
- d. Iskatewizaagegan should be granted party status in the Claim, and thereby provided an opportunity to submit its Declaration of Claim regarding the Garden Islands.

III. CONSENT

15. Based on its Response to Iskatewizaagegan's Application for Intervenor Status, it is reasonable presumed that Canada does not have any objections to the relief as sought by Iskatewizaagegan in this Application.

16. The Shoal Lake #40 First Nation has not consented to the relief as sought by Iskatewizaagegan, but will respond to this Application as indicated above.

Dated at the City of Kenora in the Province of Ontario this 1st day of March, 2016

Per Terence Douglas Professional Corporation

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