

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N :

BEARDY'S & OKEMASIS BAND #96 and #97

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	May 25, 2012	D É P O S É
Amy Clark		
Ottawa, ON	30	

Claimant  
(Respondent)

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

As represented by the Minister of Aboriginal Affairs and Northern Development Canada

Respondent  
(Applicant)

and

PREMIÈRE NATION DES ATIKAMEKW D'OPITCIWAN

Applicant

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**NOTICE OF APPLICATION FOR AN APPLICATION FOR LEAVE  
TO INTERVENE**

**Pursuant to rules 34 and 45 of the  
*Specific Claims Tribunal Rules of Practice and Procedure***

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The present notice of application for an application for leave to intervene is filed pursuant to the provisions of the *Specific Claims Tribunal Act* (the "Act"), and the *Specific Claims Tribunal Rules of Practice and Procedure* (the "Rules").

TO :

BEARDY'S & OKEMASIS BAND  
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Attention: Daniel J. Kuhlen

**I. Relief Sought (Rule 34 (a))**

1. The Applicant Première Nation des Atikamekw d'Opitciwan seeks an Order pursuant to subsection 25(1) of the *Act* granting leave to intervene in the Application to Strike scheduled to be heard before the Specific Claims Tribunal on June 12, 2012 in Saskatoon.

**II. Grounds (Rule 34 (a))**

2. The Première Nation des Atikamekw d'Opitciwan is eligible to file this application having received Notice from Justice Harry Slade, pursuant to subsection 22(1) of the *Act* on May 18, 2012, indicating that the Application to Strike “might, in the opinion of the Tribunal, significantly affect the interests of the Première Nation des Atikamekw d'Opitciwan.”

3. The intervention of the Première Nation des Atikamekw d'Opitciwan will provide the Tribunal with a different perspective, which will help the Tribunal in resolving certain legal issues pertaining to the Application to Strike, as outlined in Section VI below.

4. While it is understood that the present Notice of Application is being submitted close to the hearing date, the Première Nation des Atikamekw d'Opitciwan has acted diligently upon receipt of Tribunal Practice Direction #6, and has filed the present Notice as quickly as possible. Furthermore, the Première Nation des Atikamekw d'Opitciwan undertakes to ensure that this intervention causes the least amount of inconvenience to the Parties, and is therefore prepared to provide its Memorandum of Law and Argument prior to the June 12 hearing date and does not request that the hearing date be delayed.

5. It is in the interests of justice that a Party that may be significantly impacted by a Tribunal decision, and that has received a Notice pursuant to subsection 22(1) of the *Act*, be provided with an opportunity to make representations on the issues affecting them. The premise advanced and the assertions made by the Crown in its Memorandum of Law and Argument, if accepted by the Tribunal, would cause extreme prejudice to the rights and interests of the Première Nation des Atikamekw d'Opitciwan.

**III. Consent (Rule 34 (b))**

6. The Parties have not consented to the relief sought.

**IV. Identification (Rule 45 (a))**

7. PREMIÈRE NATION DES ATIKAMEKW D'OPITCIWAN  
c/o Dionne Schulze s.e.n.c.  
507 Place d'Armes, # 1100  
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Courriel : [fwalsh@dionneschulze.ca](mailto:fwalsh@dionneschulze.ca)

**V. Proposed Manner to Participate (Rule 45(b))**

8. In order to limit costs associated with its intervention, the Applicant proposes to intervene solely by filing a Memorandum of Law and Argument on the issues outlined in Section VI below.

**VI. How Participation Can Assist the Tribunal (Rule 45(b))**

9. The Première Nation des Atikamekw d'Opitciwan intends to present legal arguments regarding paragraphs 7-11 of the Crown's Memorandum of Law and Argument. These arguments shall address the potential impacts that the Tribunal's decision on the Crown's Application to Strike may have on other claims before the Tribunal that pertain to other assets that the Crown argues as being "individual assets". The arguments raised on this point will relate specifically to the use of subsections 17 (a) and 14(1) of the *Act* as a basis to make applications to strike on this ground.

10. The primary reason for the intervention of the Première Nation des Atikamekw d'Opitciwan pertains to the Crown's interpretation of subsection 14(1) of the *Act* (invoked as Ground II 2) in the Application to Strike, and paragraphs 12-15, and 30-33 of the Crown's Memorandum of Law and Argument).

11. The Première Nation des Atikamekw d'Opitciwan will argue that the legislator did not have the intention, with subsection 14(1) of the *Act*, to limit the Tribunal's jurisdiction to losses stemming from assets held in common by a First Nation. As a francophone First Nation, the Première Nation des Atikamekw d'Opitciwan will provide insight on the significance of the difference between the French and English versions of subsection 14(1) of the *Act*.

12. While the undersigned attorneys have not had the advantage of having read the Claimants (Respondent)'s Response to the Application to Strike, no substantial arguments have been raised by any of the Parties thus far regarding the interpretation of subsection 14(1) of the *Act* and whether this subsection limits the Tribunal's jurisdiction to losses stemming from assets held in common by a First Nation. The Claimant (Respondent)'s Response to the Request for Leave (dated July 28, 2011) did not address this issue, and focused on the test to be met to strike a claim, and on the issue of characterising annuities as collective versus individual assets.

13. Therefore, many of the arguments that the Applicant intends to raise will be of assistance to the Tribunal as they have not been advanced by any of the Parties to the Application to Strike thus far. These arguments, as outlined in this Section, meet the requirements for “useful intervention” as required, by analogy, in interventions at the Federal Court of Canada:

The assistance must not merely be a reiteration of the position taken by a party, but rather must provide a different perspective. What is required is a “relevant and useful point of view which the initial parties cannot or will not present”. (*Ferroquus Railway Co. v. Canadian National Railway Co.* [2003] F.C.J. No. 1621 at para. 13).

14. The Première Nation des Atikamekw d’Opitciwan will also inform the Tribunal on its experience with the Crown’s restrictive interpretation of eligibility of so-called “individual losses” under the *Specific Claims Policy and Process Guide*, and how this relates to the statutory interpretation of subsection 14(1) of the *Act* that the Crown is advancing in this Application to Strike. Arguments pertaining to the Crown’s interpretation of the *Act*’s preamble will also be made. We will therefore assist the Tribunal by addressing the arguments made by the Crown in paragraphs 30-39 of the Crown’s Memorandum of Law and Argument.

15. While the Première Nation des Atikamekw d’Opitciwan does not intend to make representations on the question of annuities, it is submitted that its intervention will nevertheless be useful to the Tribunal. In fact, it is submitted that the Tribunal cannot grant the Application to Strike without first adopting the premise advanced by the Crown that subsection 14(1) of the *Act* limits the Tribunal’s jurisdiction to losses stemming from assets held in common by a First Nation. It is this very premise that the Première Nation des Atikamekw d’Opitciwan intend to challenge, and the fact that this premise may be adopted by the Tribunal in deciding the Application to Strike may seriously prejudice its rights and interests.

## **VII. Intention to Support (Rule 45 (c))**

15. While the undersigned attorneys have not had a chance to read the Claimant (Respondent)'s Response to the Application to Strike, we will be supporting the Claimant (Respondent)'s position with respect to the dismissal of the Application to Strike.

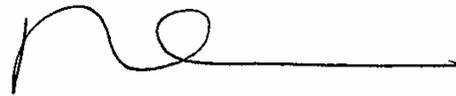
**VIII. Language (Rule 45 (d))**

16. The Applicant intends to file its Memorandum of Law and Argument in English.

**VIII. Costs**

17. The Applicant also asks that its Application be granted without costs.

Dated at the City of Montréal, in the Province of Québec, Canada, this 25<sup>th</sup> day of May, 2012.



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