FILE NO.: SCT-5001-17
CITATION: 2020 SCTC 2
DATE: 20200204

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:	
BIRCH NARROWS FIRST NATION AND BUFFALO RIVER DENE NATION Claimants (Respondents)	Glenn Epp, for the Claimants (Respondents)
– and –	
HER MAJESTY THE QUEEN IN RIGHT OF CANADA As represented by the Minister of Crown-Indigenous Relations Respondent (Respondent)	Jenilee Guebert, for the Respondent (Respondent)
– and –	
ENGLISH RIVER FIRST NATION Intervenor (Respondent)	No one appearing for the Intervenor (Respondent)
– and –	
CANOE LAKE CREE FIRST NATION Intervenor (Respondent)	Steven Carey and Amy Barrington, for the Intervenor (Respondent)
– and –	
LEONARD IRON	Leonard Iron, for the Applicant

Applicant

HEARD: November 18, 2019

REASONS ON APPLICATION

Honourable William Grist

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

Cases Cited:

Birch Narrows First Nation v Her Majesty the Queen in Right of Canada, 2018 SCTC 8; *Metlakatla Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 4; *Beardy's and Okemasis Band #96 and #97 v Her Majesty the Queen in Right of Canada*, 2012 SCTC 1; *Tsleil-Waututh Nation v Her Majesty the Queen in Right of Canada*, 2014 SCTC 11.

Statutes and Regulations Cited:

Specific Claims Tribunal Act, SC 2008, c 22, ss 2, 14, 25.

Indian Act, RSC 1985, c I-5.

Headnote:

Application to intervene – Treaty 10 – Individual rights

The Applicant, Leonard Iron, sought intervention in these proceedings. Mr. Iron's concerns related to: (1) the authority of the Parties and Intervenors to present submissions on the subject matter of the Claim, and (2) the potential effect of a decision of the Tribunal on individual Treaty 10 rights.

The Application is denied. The Claim deals with the collective aspects of agricultural and economic benefits under Treaty 10 and the alleged failure of the Respondent to uphold its obligations to the Clear Lake Band, from whom the Claimants (Birch Narrows First Nation and Buffalo River Dene Nation) are descended. Mr. Iron has no direct interest in the proceedings and the issues presented by Mr. Iron do not need to be determined to resolve this Claim. As this Claim presents no issues that dispute the Claimants' authority to bring the Claim under the *Specific Claims Tribunal Act*, SC 2008, c 22, and because a decision of the Tribunal on this Claim would not be an impediment to Mr. Iron presenting an individual rights claim in a proper

forum at a future date, his intervention is unnecessary, would cause delay, and would distract from the case presented by the Parties.

TABLE OF CONTENTS

I. INTRODUCTION

[1] The Applicant, Leonard Iron, applied to intervene in these proceedings on August 6, 2019. Mr. Iron stated that he is a member of Canoe Lake Cree First Nation and that he is also the great-grandson of Okimow Jean Baptiste Pewapiskus, also known as Chief John Iron, who signed Treaty 10 on September 19, 1906.

[2] The Claim was originally filed by Birch Narrows First Nation on December 4, 2017. Buffalo River Dene Nation was added as a Claimant on October 26, 2018 (*Birch Narrows First Nation v Her Majesty the Queen in Right of Canada*, 2018 SCTC 8). Birch Narrows First Nation and Buffalo River Dene Nation (Claimants) are successors to the Clear Lake Band, who adhered with Canada to Treaty 10 on August 28, 1906. Buffalo River Dene Nation and Birch Narrows First Nation were not recognized as separate entities by Canada until the early 1970s.

[3] The Claimants allege that Canada failed to provide agricultural and economic benefits to the Clear Lake Band in accordance with the Crown's obligations under Treaty 10, and that those failures had significant and costly consequences for their agricultural economic development. The Respondent has pled that Canada met its treaty obligations honourably.

[4] English River First Nation and Canoe Lake Cree First Nation, who also adhere to Treaty 10, were added as Intervenors on October 26, 2018 (*Birch Narrows First Nation v Her Majesty the Queen in Right of Canada*, 2018 SCTC 8) and June 21, 2019 (by Tribunal Order, with the consent of the Parties), respectively.

[5] The Claimants, Canada, Canoe Lake Cree First Nation, and English River First Nation oppose Mr. Iron's Application to intervene. English River First Nation did not participate in the hearing of this Application.

II. SUBMISSIONS OF THE PARTIES ON THE APPLICATION TO INTERVENE

[6] Mr. Iron submitted that he has a perspective on Treaty 10 and the Canoe Lake Band Membership Code that is unique among the Parties and Intervenors. His concerns are: (1) the authority of the Parties and Intervenors to present submissions on the subject matter of the Claim, and (2) the potential effect of a decision of the Tribunal on individual Treaty 10 rights.

[7] Mr. Iron raised issues relating to how membership in the Canoe Lake Cree First Nation is determined, the details of which were not pursued at the hearing. In Mr. Iron's view, the Canoe Lake Band Membership Code excludes some Treaty 10 rights holders, and no final resolution of the issues of agricultural and economic benefits under Treaty 10 can occur with respect to excluded treaty rights holders. Mr. Iron also referred to Treaty 10's land in severalty provision for certain individuals, and asserted that such individuals were also entitled to economic benefits. Mr. Iron took the position that if individual rights holders under Treaty 10 are not heard, their treaty rights cannot be abrogated or derogated through a decision or agreement in these proceedings.

[8] Birch Narrows First Nation and Buffalo River Dene Nation submitted that allowing the Application to intervene would introduce issues not already in the pleadings and increase the cost and length of the proceedings. In their view, this proceeding is the wrong place to address the issues embedded in Mr. Iron's Application, including the question of individual treaty rights, constitutional challenges relating to band membership, the legitimacy of band governance, the finality of the Saskatchewan Treaty Land Entitlement Framework Agreement, or the 1985 amendments to the *Indian Act*, RSC 1985, c I-5. Birch Narrows First Nation and Buffalo River Dene Nation submitted that the Tribunal has no jurisdiction with respect to individual treaty rights and if economic and agricultural rights under Treaty 10 are collective rights, then the Claimants are the proper litigants.

[9] Canada submitted that the Applicant has no direct interest in the proceedings and agreed with the Claimants that the Tribunal is the wrong forum for the concerns he has raised. Canada stated that "the outcome of this claim will not directly affect Mr. Iron's legal rights or obligations" (Respondent's Written Submissions at para 6). Canada expressed concern regarding delays and costs, and noted that concern for precedent and the development of the law is insufficient on its own to justify intervention.

[10] The Intervenor, Canoe Lake Cree First Nation, also took the position that the Applicant has raised unrelated issues, the Claimants' standing is not in issue, and the Applicant should not be allowed to introduce unnecessary complexity into the proceedings.

III. LAW

[11] Section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 [*SCTA*] defines "claimant" as a "First Nation", which in turn is defined as an *Indian Act* band or certain former bands. Under section 14, *SCTA*, only a "First Nation" may file a claim.

[12] Mr. Iron made his Application to intervene pursuant to section 25 of the *SCTA*:

> **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.

[13] The authorities regarding discretion to grant leave to intervene were cited in *Metlakatla Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 4 at paras 24–25 [*Metlakatla*]:

> The discretion to grant leave to intervene is outlined in *Carter v Canada (AG)*, 2012 BCCA 502 at paras 12–15:
>
> > Generally, intervention will be permitted in two situations. The first is the case in which the applicant has a direct interest in the litigation, in the sense 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. The fact that the outcome might ultimately adversely impact individual members of a proposed intervenor is not, however, sufficient to constitute the necessary direct interest, since the Court would not, on the appeal, be directly considering their rights or liabilities: *Ahousaht Indian Band v. Canada (Attorney General)*, 2012 BCCA 330 at paras. 4-8, 325 B.C.A.C. 312 (Groberman J.A. in Chambers), aff'd on review, 2012 BCCA 404.
> >
> > Where an applicant does not have a direct interest, the Court may nevertheless grant intervenor status if the appeal raises public law issues that legitimately engage the applicant's interests, and the applicant brings a different and useful perspective to those issues that will be of assistance in resolving them. The appropriate considerations were summarized by Madam Justice Newbury in *R. v. Watson and Spratt*, 2006 BCCA 234 at para. 3, 70 W.C.B. (2d) 995 (Chambers):

> ... where the applicant does not have a "direct" interest in the litigation, the court must consider the nature of the issue before the court (particularly whether it is a 'public' law issue); whether the case has a dimension that legitimately engages the interests of the would-be intervenor; the representativeness of the applicant of a particular point of view or "perspective" that may be of assistance to the court; and whether that viewpoint will assist the court in the resolution of the issues or whether, as noted in *Ward v. Clark*, [2001] B.C.J. No. 901, the proposed intervenor is likely to "take the litigation away from those directly affected by it". (Para. 6.) ...

Factors weighing against granting intervenor status include the possibility that an intervenor will expand the scope of the proceeding by raising new or immaterial issues, or create an undue burden or injustice for the parties to the appeal by, for example, forcing them to respond to repetitive arguments: *Friedmann* at para. 19; *Faculty Association of the University of British Columbia v. University of British Columbia*, 2008 BCCA 376 at para. 15, 263 B.C.A.C. 3 (Chambers). Rule 36(5)(b) affirms this as it provides an intervenor may only make submissions that pertain to the facts and issues set out in the factums of the parties unless a court orders otherwise.

Finally, an intervenor is to make principled submissions on points pertinent to the appeal. It is not to argue for a particular result or support the position of one party or the other: *Friedmann* at para. 28

Further comments relating to applications relying on a direct interest are found in *Ahousaht Indian Band v Canada (AG)*, 2012 BCCA 330 at paras 3–4, [2012] 4 CNLR 24:

> Concerns of fairness dictate that the Court will generally grant intervenor status to a person whose interests are directly affected by an appeal. That said, the Court interprets this basis of intervention narrowly. A proposed intervenor must demonstrate that the decision in the appeal will directly determine his, her, or its rights or liabilities. The mere fact that an appeal judgment may set a precedent that will have some effect on the applicant's legal position does not constitute a direct interest. In *Faculty Association of the University of British Columbia v. University of British Columbia*, 2008 BCCA 376 at para. 9, Lowry J.A. noted that "[h]aving a direct interest has been contrasted with simply being concerned about the effect of a decision or being affected by it because of its precedential value." See also *Susan Heyes Inc. v. South Coast B.C. Transportation Society*, 2010 BCCA 113.
>
> Few prospective intervenors can demonstrate a direct interest in litigation. More commonly, prospective intervenors seek to present argument on the basis that they are particularly well-placed to assist the Court by

> providing a special perspective on an issue of public importance. [emphasis in original]

[14] To summarize, an intervenor should:

a. have a direct interest, or,

b. if a public law matter is involved, a direct interest may not be required so long as the applicant:

   i. offers a valuable contribution or different perspective that will assist the court in resolving matters before it;

   ii. has a legitimate engagement with the proposed intervention; and,

   iii. does not take the litigation away from the issues pled by the parties.

[15] Pursuant to subsection 25(2), *SCTA*, the Tribunal must consider all relevant factors, including the effect on the cost and length of the proceedings. Among other things, this includes whether the applicant would expand the scope and bring in immaterial issues, or create an undue burden on the parties. To date the Tribunal has tended toward inclusion unless the proposed intervenor would significantly widen the issues, take the dispute in new directions, and substantially add to time and cost (see: *Metlakatla*; *Beardy's and Okemasis Band #96 and #97 v Her Majesty the Queen in Right of Canada*, 2012 SCTC 1 [*Beardy's*]; *Tsleil-Waututh Nation v Her Majesty the Queen in Right of Canada*, 2014 SCTC 11 [*Tsleil-Waututh*]). In *Beardy's* and *Tsleil-Waututh* the Tribunal took fairly inclusive approaches to intervention; however, the risks relating to cost, the introduction of new issues, and the length of the proceedings were relatively low in both instances. In *Metlakatla*, the application was dismissed because the applicant was concerned about issues that were not pled, and the proposed purpose of the application did not in fact require intervention.

IV. ANALYSIS

[16] Here, Mr. Iron would like to present issues relating to individual rights established by Treaty 10 as well as issues relating to the authority of the Claimants to advance claims of the nature presented in these proceedings.

[17] The Respondent has no dispute with the Claimants' authority to advance their Claims as pled.

[18] As the Claim has been pled, the Parties do not purport to seek a judicial interpretation or determination relating to the individual rights under Treaty 10 referred to by Mr. Iron, specifically: land in severalty and any related individual agricultural benefits. While the precise nature of such rights has not been determined in the courts, including whether they are best described as individual or collective with individual aspects, the pleadings in this Claim do not seek a final resolution of such rights. Resolution of the issues in this Claim would not speak to these individual rights under Treaty 10. Mr. Iron has no direct interest in these proceedings, and the issues presented by Mr. Iron do not need to be determined to resolve this Claim. Allowing Mr. Iron to intervene would widen the issues in a manner that would confuse and delay determination of the Claim.

[19] The *SCTA* is a federal statute limited to claims brought by *Indian Act* bands against Canada based on the grounds enumerated in subsection 14(1). The Tribunal is not the appropriate forum for resolving disputes about band membership codes, and *SCTA* does not provide for individuals to file claims. Indeed, Mr. Iron did not intend to bring an individual claim by means of this Application.

[20] A decision of the Tribunal in this Claim would not be binding on any court considering individual rights under Treaty 10.

[21] As this Claim presents no issues that dispute the Claimants' authority to bring the Claim under the *SCTA*, and because a decision of the Tribunal on this Claim would not be an impediment to Mr. Iron presenting an individual rights claim in a proper forum at a future date, his intervention is unnecessary and would distract from the case presented by the Parties.

[22] The Application of Mr. Iron to intervene in this Claim is denied.

WILLIAM GRIST

Honourable William Grist

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20200204

File No.: SCT-5001-17

OTTAWA, ONTARIO February 4, 2020

PRESENT: Honourable William Grist

BETWEEN:

BIRCH NARROWS FIRST NATION AND BUFFALO RIVER DENE NATION

Claimants (Respondents)

and

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

Respondent (Respondent)

and

ENGLISH RIVER FIRST NATION

Intervenor (Respondent)

and

CANOE LAKE CREE FIRST NATION

Intervenor (Respondent)

LEONARD IRON

Applicant

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AND TO:	**Counsel for the Respondent (Respondent)** As represented by Jenilee Guebert Department of Justice
AND TO:	**Counsel for the Intervenor (Respondent) ENGLISH RIVER FIRST NATION** No one appearing Thompson Dorfman Sweatman LLP
AND TO:	**Counsel for the Intervenor (Respondent) CANOE LAKE CREE FIRST NATION** As represented by Steven Carey and Amy Barrington Maurice Law, Barristers & Solicitors
AND TO:	**LEONARD IRON, Applicant**