

FILE NO.: SCT-7001-20
CITATION: 2022 SCTC 3
DATE: 20220309

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:

COOK'S FERRY INDIAN BAND

Claimant

– and –

HER MAJESTY THE QUEEN IN RIGHT
OF CANADA

As represented by the Minister of Crown-
Indigenous Relations

Respondent

Darwin Hanna and Caroline Roberts, for the
Claimant

James Mackenzie and Peri Smith, for the
Respondent

HEARD: February 10, 2022, and via written
submissions

REASONS ON APPLICATION

Honourable William Grist

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

Cases Cited:

Pekuakamiulnuatsh First Nation v Her Majesty the Queen in Right Canada, 2020 SCTC 5; *Tsleil-Waututh Nation v Her Majesty the Queen in Right of Canada*, 2014 SCTC 11; *Metlakatla Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 4.

Statutes and Regulations Cited:

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

Specific Claims Tribunal, Practice Direction No. 6.

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I. THE ISSUE

[1] The Parties have brought to the Specific Claims Tribunal's (Tribunal) attention correspondence from counsel for Cicyetkwu Dunstan, a litigant in a British Columbia Supreme Court action raising an Aboriginal title claim on behalf of the "Pukaist Nation" to territory which includes lands dedicated as Indian Reserve No. 10 for the Claimant, Cook's Ferry Indian Band.

[2] The Claimant claims compensation for approximately 11 acres of land taken from the reserve for the use of the Canadian Pacific Railway. The letter from Cicyetkwu Dunstan's counsel informed the Respondent, the Crown, that the claim advanced by Cicyetkwu Dunstan included the Claimant's reserve, Indian Reserve No. 10, but made no mention of participation in this Claim.

[3] The question raised is whether notice of the action advanced by Cicyetkwu Dunstan should prompt a Notice pursuant to subsection 22(1) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [SCTA], to her, a Notice that may preface any application she may want to advance under subsection 25(1) of the *SCTA* for intervenor status.

II. POSITION OF THE PARTIES

[4] The Respondent takes no position in respect of issuance of the section 22 Notice and notes it has very little information that would allow it to formulate a position.

[5] In its written submissions, the Claimant cites *Pekuakamiulnuatsh First Nation v Her Majesty the Queen in Right Canada*, 2020 SCTC 5 [*Pekuakamiulnuatsh*], arguing it is mandatory for the potential intervenor to present a threshold case for intervenor status. I note that subsection 22(1) of the *SCTA* does not require the potentially affected party to present an application and should the Tribunal receive information, or should the circumstances be such that, in the Tribunal's opinion there is a party that might be significantly affected by a Tribunal decision, the section allows the discretion to issue the Notice.

III. ANALYSIS

[6] Subsections 22(1) and 25(1) of the *SCTA* provide:

22 (1) If the Tribunal's decision of an issue in relation to a specific claim might, in its opinion, significantly affect the interests of a province, First Nation or person,

the Tribunal shall so notify them. The parties may make submissions to the Tribunal as to whose interests might be 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.

[7] The jurisdiction of the Tribunal is limited under section 14 of the *SCTA* to claims brought by First Nations recognized as bands under the *Indian Act*, RSC 1985, c I-5, making claims for monetary compensation against the federal Crown for breaches recognized under the section. Claims cannot be brought by individuals and the “Pukaist Nation” is not known, nor has it ever been a band recognized under the *Indian Act*, RSC 1985, c I-5. An individual cannot bring a claim or directly take part as a claimant under the *SCTA*. An individual may, however, with leave, be granted intervenor status. The leave granted may allow relevant representations in respect of issues affecting the intervenor and may be constrained by conditions imposed limiting the form, length and subject matter of the intervenor’s participation.

[8] *Pekuakamiulnuatsh* was a case where the potential intervenor was the Canadian National Railway (CN), a large corporate entity with extensive experience in relation to historic acquisitions of reserve lands. In many cases, the CN has been given a subsection 22(1) Notice and, in cases where a notice has not been given, *Practice Direction No. 6*, subsections 2 and 3, is specifically designed to allow for an application for intervenor status to be advanced independent of a subsection 22(1) Notice. In a case involving lands secured for the railway, the CN can be expected to know of this directive and be able to comply with the procedure if it decided its interests warranted an application. *Practice Direction No. 6*, subsection 2, provides:

2. If a Province, First Nation or person that has not received notice under s. 22(1) believes that its interests may be significantly affected by the decision of the Tribunal on an issue in relation to a specific claim, it may, in writing to the attention of the Chairperson, request that it be provided notice under s. 22(1).

3. The request shall:

- a) identify the specific claim (including the title of proceedings and SCT file number)
- b) identify the issue
- c) set out the name, address, telephone number and email address of the Province, First Nation or person making the request

- d) set out, in brief summary, the basis on which it believes its interests may be significantly affected
- e) provide the name, address, telephone number and email address of counsel.

[9] In *Pekuakamiulnuatsh*, at paragraphs 42–43, it was noted that:

[...] CN’s failure to seek intervenor status in situations where notice has been sent to it, and its failure to seek notice under *Practice Direction # 6* in situations where notice has not been sent to it, demonstrates that it does not itself believe that the Tribunal’s decisions may have a sufficiently significant impact on its interests to warrant a notice or its participation.

In this case, the Tribunal knows that CN is already aware of the existence of the record, as confirmed by the Parties at the Case Management Conference of April 7, 2020. As the Tribunal’s proceedings are public, CN will therefore be able to follow developments in the case without difficulty, despite the absence of notice. CN may also be called upon to share documents or testify. Finally, if CN wishes to receive notice and participate in the proceeding, it may at any time make a request under *Practice Direction #6*, by claiming the decision will “significantly affect” its rights.

[10] This level of sophistication may not be available in respect of persons or bands not familiar with *SCTA* claims and procedures. In *Tsleil-Waututh Nation v Her Majesty the Queen in Right of Canada*, 2014 SCTC 11, Whalen J said the following, at paragraph 44, in respect of an application for intervenor status by a band that had claims raising similar “bring forward” issues to determine present value of historical loss, as were being litigated in that claim:

Given the joint goals of reconciliation and access to justice in respect of the resolution of First Nations’ historic claims, I think at this point in time and in respect of granting intervenor status, the Tribunal’s approach should be generous and flexible. The *SCTA* is clearly remedial, and in that situation, the law supports taking a liberal interpretation for the purpose of giving effect to the *Act*’s purpose.
[citations omitted]

[11] This liberal approach should, for the same reason in appropriate cases, extend to the preliminary measure of notice.

IV. CONCLUSION

[12] Subsection 22(1) of the *SCTA* is discretionary in allowing the Tribunal to notify a province, First Nation or person should it be the Tribunal’s view that its ultimate decision might significantly affect the interests of such a potential applicant for intervenor status. Any step to be taken after such a notice is governed by subsection 25(1). Should an application for intervenor status follow, the tests outlined in *Metlakatla Indian Band v Her Majesty the Queen in Right of Canada*, 2018

SCTC 4, will be applied to determine if intervenor status will be granted and the conditions that will apply.

[13] As stated in *Pekuakamiulnuatsh*, the threshold for notice is low and in *Tsleil-Waututh Nation v Her Majesty the Queen in Right of Canada*, 2014 SCTC 11, it was the view of the Tribunal that the Tribunal practice should be generous and flexible, supported by a liberal interpretation of the section with the goal of effecting reconciliation and justice. This goal is particularly appropriate when the persons or bands that may be affected may not be sophisticated in their knowledge of the *SCTA* and the Tribunal procedures, and the ability to advance an application for intervenor status independent of a section 22 Notice by way of *Practice Direction No. 6*.

[14] In this case the information reaching the Tribunal is of an Aboriginal title claim to land that includes the land taken for railway purposes. The Claim by the Cook's Ferry Indian Band is for compensation for 11 acres of the land claimed in the Aboriginal title claim advanced by Cicyetkwu Dunstan. The Aboriginal title claim and the original reserve allocation appear to overlap in respect of these 11 acres. This in my view meets the threshold of a Tribunal decision that might significantly affect the interests of a person. Further, this Claim is at an early stage of the proceedings and any application prompted by the Notice is likely to be expediently dealt with, and here delay until more is known in the context of this very preliminary procedure is to delay what should be dealt with at this early stage. Accordingly, the Tribunal will send a section 22 Notice to Cicyetkwu Dunstan.

WILLIAM GRIST

Honourable William Grist

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

Date: 20220309

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OTTAWA, ONTARIO March 9, 2022

PRESENT: Honourable William Grist

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COOK'S FERRY INDIAN BAND

Claimant

and

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

Respondent

COUNSEL SHEET

TO: Counsel for the Claimant COOK'S FERRY INDIAN BAND
As represented by Darwin Hanna and Caroline Roberts
Callison & Hanna, Barristers & Solicitors

AND TO: Counsel for the Respondent
As represented by James Mackenzie and Peri Smith
Department of Justice