

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

ESK'ETEMC FIRST NATION

SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	December 12, 2016  Stephanie Duffy	D E P O S E
Ottawa, ON	1	

Claimant

v.

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

Respondent

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**DECLARATION OF CLAIM**  
**Pursuant to Rule 41 of the**  
*Specific Claims Tribunal Rules of Practice and Procedure*

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This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

December 12, 2016

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(Registry Officer)

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

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**I. Claimant (R. 41(a))**

1. The Claimant, Esk'etemc First Nation ("Esk'etemc") confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a "band within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended, in the Province of British Columbia.

**II. Conditions Precedent (R. 41(c))**

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have been fulfilled:

16.(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

- (a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim in whole or in part;
3. Esk'etemc initially filed the Wright's Meadow Pre-emption Specific Claim with the Department of Indian Affairs ("DIA"), Specific Claims Branch on or about February 14, 1995, in respect of breaches by Canada relating to the pre-emption of an Esk'etemc Indian settlement known as Wright's Meadow (the "Claim").
4. On January 10, 2000 the Claim was rejected. On August 23, 2004, Esk'etemc requested that the Indian Claims Commission ("ICC") review its rejected specific claim. The majority of the ICC recommended that the Claim be accepted for negotiation on June 24, 2008 and their decision is reported at (2009) 23 ICCP. On May 28, 2009, Esk'etemc received a letter from the Minister refusing to negotiate the Claim.

**III. Claim Limit (Act, s. 20(1)(b))**

5. Esk'etemc does not seek compensation in excess of \$150 million for the purposes of the Claim.

**IV. Grounds (Act, s. 14(1))**

6. The following are the grounds for the specific claim, as provided for in s. 14(1) of the *Specific Claims Tribunal Act*:

- (b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to Indians or lands reserved for Indians- of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada; and
- (c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation.

**V. Allegations of Fact (R. 41(e))**

7. Esk’etemic are descendants of the Secwepemc or Shuswap people and were also known as the Alkali Lake Band.

8. As early as 1860 when Governor James Douglas issued *Proclamation No. 15*, settlers were prohibited from pre-empting an “Indian Settlement”. This policy continued after British Columbia joined Confederation in 1871.

9. Pursuant to section 5 of the *Land Act* of 1884 (“Act”) a qualified person could “...record any tract of unoccupied and unreserved Crown lands (not being an Indian settlement) not exceeding three hundred and twenty acres...”.

10. Pursuant to section 7 of the Act if an applicant knowingly made a false statement in the Declaration, the person should have “...no right at law or equity to the land the record of which he may have obtained by making of such declaration”.

11. Section 7 further stated that the applicant was to place stakes into the ground and mark his claim.

12. A settler named William Wright (“Wright”) pre-empted a meadow that was located in the mountains about 10 miles east of Alkali Lake (the “Meadow”). In

or about 1891 or 1892 Esk'etemc had created that Meadow by destroying a beaver dam located on Alkali Creek. The destruction of the dam drained the area that had previously been covered by water exposing the Meadow for the purposes of growing hay. The Esk'etemc had a critical need for haylands due to the inadequacy of agricultural land being set aside as Esk'etemc reserve.

13. This shortage of agricultural land was consistent with what had been discovered by Commissioner O'Reilly when in 1881 he was setting aside reserve lands for Esk'etemc. He stated:

I found that the best locations had for many years been occupied by white settlers who had obtained Crown Grants to the exclusion of the Indians; that the country for the most part was barren and destitute of water; consequently I experienced much difficulty in selecting even a limit[ed] quantity of land suitable for their purposes.

14. Esk'etemc had erected a number buildings (pithouses, log A-frame houses), stables and corrals on the Meadow. Despite this, on June 21, 1893 Wright swore a Declaration that the land being pre-empted was not an "Indian settlement or any part thereof" which was a false statement, as clearly that was evidence of a "settlement".

15. Wright was issued a Certificate of Pre-Emption Record dated July 8, 1893 No. 793 that described the boundaries as:

Commencing at stake marked A about 10 miles north from Alkali Lake thence North 80 chains, west 40 chains, south 80 chains, east 40 chains to initial point.

And in the Application to Record as:

About 2 ½ miles north of Indian Reserve commencing at a stake situate on the north west corner and marked A. Thence running south eighty chains to a point marked B. Thence east forty chains to a point marked C. Thence north eight chains to a point marked D. Thence west forty chains to starting point.

16. Esk'etemc refused to permit Wright to take possession and complained to the local Indian Agent, Laing Meason ("IA Meason") who wrote to Indian Superintendent

- A.W. Vowell ("Vowell") requesting him to set aside the Meadow as a reserve for the Esk'etemc. IA Meason reported in July, 1893 that "this neighborhood have hitherto respected the squatters rights of the Indians to the meadows by never attempting a purchase of such lands when utilized by the Indians".
17. Indian Agent Gomer Johns ("IA Johns") took over from IA Meason and he further reported to Vowell on September 21, 1893 that Wright "would take \$250.00 or would give \$200.00, this was subsequently communicated to the Indians but they were determined to listen to no terms that would deprive them of the meadow". He further asked Vowell "that some way may be found of securing the meadow to the Indians; the man Wright could not have expected to obtain peaceable possession of the meadow under the circumstances I have stated".
  18. On October 26, 1893 Chief August of the Esk'etemc wrote Vowell asking for assistance after which IA Johns once again visited the Esk'etemc and confirmed in a letter to Vowell dated November 17. 1893 that there was little hay on Esk'etemc's other reserves and the loss of the Meadow would certainly be a "serious loss".
  19. Esk'etemc continued to reside at their settlement on the Meadow through that winter. The Provincial Government became involved in early 1894 wherein they sought information from Commissioner O'Reilly. He stated that he had not set aside or been requested to set the Meadow aside. However, he said that "if there are any other meadows not legally held by Whites, where the Alkali Lake Indians are in the habit of cutting hay ...they may yet be secured to their use. In that event I would suggest that the Government Agent of the District be instructed not to accept for the present any further application to pre empt".
  20. Subsequent to a visit to the Meadow in July 1894, Vowell reported that "I consider that their [Esk'etemc] demands are worthy of consideration and I would strongly urge that all these patches of meadow lands situated in the mountains which have for years been used by them and which come under the head of "waste lands of

the Crown” be reserved to them without delay... I may say that the Indians have promised not to interfere with Mr. Wright should he go to take possession, in the meantime the Chief and his people are going to make an effort to settle the matter amicably with Wright whereby they can still retain possession of the meadows, in which case it should be at once made an Indian Reserve”.

21. The Deputy Superintendent General of Indian Affairs replied to Vowell stating that if Esk’etemc were successful that Vowell should “without delay, approach the Provincial authorities, through the Reserve Commissioners if necessary, and endeavour to get them to secure the land to the Indians”.
22. A final decision was made by BC Chief Commissioner of Lands and Works, F.G. Vernon, wherein he decided that the Esk’etemc were barred from acquiring the land but that they would be compensated for their improvements.
23. In mid-October 1894, Provincial government agent Phair (“Phair”) and Indian Agent Bell visited the Meadow to value the improvements. Phair reported to the Deputy Commissioner of Lands and Works that the clearing of the Meadow and the six stackyards were valued at \$45 and “that the Indians had built one dwelling house and partly four others; one stable and partly built another; also a small corral, about 500 yards brush fencing and cut a road about a mile in length about 400 yards” which were estimated to be \$145.00 There is no evidence that Esk’etemc was ever compensated for its improvements.

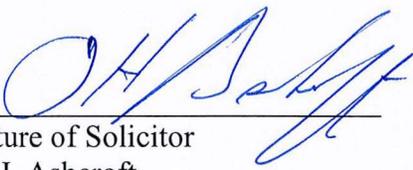
**VI. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached a lawful obligation:**

24. Canada failed to meet its statutory obligations in relation to reserve creation and breached its fiduciary duty in protecting Esk’etemc’s Indian interests by allowing the Meadow to be pre-empted.
25. There is clear evidence that the Meadow was an “Indian settlement” which demonstrate that it had a cognizable Indian interest in the Meadow. Pursuant to

the *Terms of Union, 1871*, Canada assumed discretionary control over the reserve creation process.

26. Canada had fiduciary obligations of loyalty, good faith, full disclosure and ordinary prudence to act in the best interests of Esk'etemc.
27. The provincial legislation was clear that lands that contained Indian settlements were not available for pre-emption. Wright's pre-emption was void *ab initio*.
28. Canada failed to fulfil its statutory and fiduciary duty to Esk'etemc when it failed to prevent the Meadow lands from being pre-empted that were the site of an Indians settlement. Any pre-emption of an Indian settlement was illegal as it violated the 1884 Land Act.
29. The Crown's breached its statutory and fiduciary duty and legal obligation to protect Indian interests in allowing the alienation of Indian settlements to private landholders.
30. Esk'etemc seeks compensation from Canada for:
  - a. breaches of lawful obligation; and
  - b. such other damages or compensation as this Honourable Tribunal deems, just.

Dated this 12<sup>th</sup> day of December, 2016

  
Signature of Solicitor  
Stan H. Ashcroft

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