

**SPECIFIC CLAIMS TRIBUNAL**

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	March 14, 2013	
Guillaume Phaneuf		
Ottawa, ON		1

BETWEEN:

AKISQ'NUK FIRST NATION

Claimant

v.

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

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*.

Date: March 14, 2013

Guillaume Phaneuf

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(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
Bank of Canada Building 234 Wellington Street East Tower  
Ottawa, Ontario K1A 0H8  
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**I. Claimant (R. 41(a))**

1. The Claimant, Akisq'nuk First Nation (the "First Nation") 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. The First Nation filed the Madias Tatley Pre-emption Land Alienation Specific Claim with the Department of Indian Affairs, Specific Claims Branch. The claim related to breach of duty by Canada that resulted in the First Nation's loss of reserve land entitlement to a 3040 acre parcel within the boundaries of Block 4596, Group 1, Kootenay District, ("Madias Tatley Land").
4. In a letter dated February 21, 2011, the Department of Indian Affairs and Northern Development stated:  
...it is the decision of the Minister of the Department of Indian Affairs and Northern Development not to accept for negotiation the Madias Tatley Pre-emption Land Alienation Specific Claim on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

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

5. For the purposes of the claim, the First Nation does not seek compensation in excess of \$150 million.

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

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

14. (1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

(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;

(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. Reserve Commissioner O'Reilly allotted Kootenay Indian Reserve No. 3 to the Akisq'nuk First Nation, which included 3,040 acres known as the Madias Tatley Land.
8. The order in council appointing Commissioner O'Reilly, P.C. 1334, stated that the duties of the commissioner "consist mainly in ascertaining accurately the requirements of the Indian Bands in that Province, to whom lands have not been assigned by the late Commission, and allotting suitable lands to them...". Commissioner O'Reilly's terms of

appointment included that he was to act in his own discretion "as to the particular places to be visited and the reserves to be established".

9. Commissioner O'Reilly allotted 8,320 acres as Kootenay Indian Reserve No. 3 (the "Reserve") in the Minutes of Decision dated August 9, 1884 ("Minutes of Decision").
10. In August 1886, Crown Surveyor Skinner surveyed the Reserve totaling 8,456 acres. Skinner departed from the survey instructions contained in the Minutes of Decision of Commissioner O'Reilly.
11. In a letter dated May 12, 1887, Crown Surveyor Skinner acknowledged his departure from the Minutes of Decision:

I have the honor to furnish you with the following report, and sketch of the two changes made by me in surveying the Kootenay Indian Reserve No.3 finding that the line between Stations 5 and 6 would run up the mountains and include some worthless land, I turned south at two hundred chains instead of turning at two hundred and twenty as directed in your instructions. From Station 8 to station 9 was given by you as two hundred chains, but finding that the distance would on running the south line across an Indian field, I extended the line twenty chains further south.
12. Members of the First Nation provided evidence to the McKenna-McBride Commission that the Reserve size was not adequate and did not include all of the lands that they had requested. On October 28, 1914, Indian Agent R.L.T. Galbraith for the Kootenay Agency provided evidence to the McKenna-McBride Commission that the federal government made a mistake when surveying the Reserve.
13. On March 25, 1915, the McKenna-McBride Commission ordered that a 3,040 acre parcel, the Madias Tatley Land, be added to the Reserve.

14. On March 29, 1915, the McKenna-McBride Commission rescinded the March 25, 1915 order that a 3,040 acre parcel be added to the Reserve and ordered that 2,960 acres be added to the Reserve. Through the Ditchburn-Clark review of the McKenna-McBride Commission Report, the federal government confirmed that the First Nation reasonably required the 2,960 acres of the Madias Tatley Land to be added to the Reserve. In 1923, the provincial and federal governments disallowed the order that the Madias Tatley Land be added to the Reserve.

**VI. The Basis in Law on Which the Crown is Said to Have Failed to Meet or Otherwise Breached a Lawful Obligation**

15. This claim is based on the Crown's breach of its common law fiduciary duty and legal obligation to complete the reserve creation process relating to the Madias Tatley Land, to ensure that these lands were surveyed and set aside as an Indian reserve and protected as a reserve for the exclusive use and benefit of the First Nation.

**VII. Relief Requested**

16. The First Nation seeks:

- a. Compensation for failure to provide the Madia Tatley Land as reserve lands;
- b. Interest on compensation for failure to provide the Madia Tatley Land as reserve lands;
- c. Costs of this claim; and
- d. Such other relief or compensation as this Honourable Tribunal deems just.

Dated this 13<sup>th</sup> day of March, 2013.



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Signature of Solicitor

**Darwin Hanna**

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