

FILE NO.: SCT-7006-12
CITATION: 2016 SCTC 3
DATE: 20160223

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
AKISQ'NUK FIRST NATION)	
)	Darwin Hanna, Adam Munnings and Katrina
)	Harry, for the Claimant
Claimant)	
)	
- and -)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	Christa Hook, Deborah McIntosh and Brett
Affairs and Northern Development)	Nash, for the Respondent
)	
)	
Respondent)	
)	
)	
)	

CORRIGENDUM TO REASONS FOR DECISION

Honourable Harry Slade, Chairperson

[1] This is a Corrigendum to my Reasons for Decision dated February 5, 2016 (2016 SCTC 3).

[2] A headnote has been added to the Reasons for Decision.

[3] Inconsistencies in capitalization, punctuation, italicization, spacing, citations and short titles have been corrected throughout the Reasons for Decision.

[4] A note on terminology has been added on page 9, and some changes in the use of the words Aboriginal, Indigenous, Indian and Native have been made throughout the Reasons for Decision.

[5] The second sentence of paragraph 5 of the Reasons for Decision has been corrected as follows:

It submits that the Crown's alleged breaches of fiduciary duty fall within sub-sections 14(1)(b) and (c) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [SCTA], which provides:

[6] The second sentence in the quote of paragraph 24 and 284 of the Reasons for Decision has been corrected as follows:

The focus is on the particular interest that is the subject matter of the dispute: *Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245, at para. 83.

[7] Paragraph 37 of the Reasons for Decision has been corrected as follows:

The *Royal Proclamation* forbade any Colonial Governor from issuing Patents “...upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians...”. Also forbidden was the “...taking Possession of any of the Lands above reserved, without our especial leave...” (emphasis added).

[8] The third sentence of paragraph 72 of the Reasons for Decision has been corrected as follows:

The text asserts: “...it is a matter of urgent importance to convince the Indians of that Province that the Dominion Government will do full justice to the rights of the Indian population,” and to fulfil “...the just expectations of those Indians” (Cail at 194).

[9] Point 2 of the quote of paragraph 87 of the Reasons for Decision has been corrected as follows:

2. That the said Commissioners shall as soon as practicable after their appointment meet at Victoria and make arrangements to visit, with all convenient speed, in such order as may be found desirable, each Indian Nation (meaning by Nation all Indian tribes speaking the same language) in British Columbia and after full [i]nquiry on the spot, into all matters affecting the question, to fix and determine for each Nation separately the number, extent and locality of the Reserve or Reserves to be allowed to it.

[10] The third sentence of paragraph 89 of the Reasons for Decision has been corrected as follows:

The Memorandum (the “JIRC Agreement”) attached to the Governor in Council’s approval on November 10, 1875, excerpted above, provided, in part:

[11] The first sentence of paragraph 90 of the Reasons for Decision has been corrected as follows:

Clause 5 of the JIRC Agreement was introduced by the Province.

[12] Paragraph 97 of the Reasons for Decision has been corrected as follows:

O’Reilly was instructed to take guidance from the liberal policy embodied in the *Terms of Union*, and as set out in the agreement establishing the JIRC:

[13] Paragraph 112 of the Reasons for Decision has been corrected as follows:

McKenna consulted with Indians throughout British Columbia and reported that a great source of dissatisfaction was the provincial reversionary interest in their lands stemming from Clause 5 of the JIRC Agreement.

[14] In section V. Background, C. Finality, paragraph 115 has been added and the structure has been corrected as follows:

C. Finality

[115] The history of reserve creation in British Columbia raises this question: When is “final” final?

1. The Joint Indian Reserve Commission
2. The McKenna-McBride Agreement
3. Comment
4. Finality, Round 2
5. Proceedings of MMC, Reductions and Additions to Reserves
6. The Additional Land
7. The Survey Land, and the Addition
8. Disposing of the Promised Consent to Reserve Reductions
9. Comment on Disposal of Indian Consent
10. True Intent and Purpose of the Agreement, and Government Prerogatives
11. Comment on Shifting Purposes
12. Finality, Round 3: Ditchburn Clark Review
13. Comment on Federal Capitulation
14. Finality Achieved

[15] Paragraph 117 of the Reasons for Decision has been corrected as follows:

This was in order to effect the “speedy and final adjustment of the Indian Reserve question in British Columbia...” (emphasis added).

[16] The first sentence in point 2 of paragraph 123 of the Reasons for Decision has been corrected as follows:

The Commissioners under the JIRC Agreement were mandated to settle the allotment of reserves with finality.

[17] Paragraph 129 of the Reasons for Decision has been corrected as follows:

Provincial OIC 1341 mirrors P.C. 3277:

[18] The third sentence of paragraph 162 of the Reasons for Decision has been corrected as follows:

In March 1919, the Province enacted the *Indian Affairs Settlement Act*.

[19] Paragraph 165 of the Reasons for Decision has been corrected as follows:

In April 1920, Premier Pattullo wrote to Prime Minister Meighen to propose a review of the McKenna-McBride report. He claimed that it contained errors, and asserted, regarding the provision of adequate lands for the Indians, that “...it was not the intention to place these lands at strategic locations, there to block white settlement and acquire speculative value” (Harris at 251).

[20] The second sentence of paragraph 169 of the Reasons for Decision has been corrected as follows:

This pleased Ditchburn as it would “have the effect of showing the Provincial authorities that we are desirous of acting fairly and are only asking for what we deem to be reasonably necessary for the Indians” (Harris at 252).

[21] The second sentence of paragraph 180 of the Reasons for Decision has been corrected as follows:

Scott committed himself and the Minister to approve the McKenna-McBride report on the basis that the additions be disallowed without any prior arrangement to ensure that grazing lands would subsequently become available.

[22] Paragraph 198 of the Reasons for Decision has been corrected as follows:

It may safely be inferred that it was the practice of the McKenna-McBride Commissioners to assure the Indians that land set apart by the JIRC would not be taken without their consent.

[23] The first sentence of paragraph 208 of the Reasons for Decision has been corrected as follows:

Chief Arbel and others present at the September 1914 meeting would have understood that the Commission's decisions were final.

[24] The second sentence of paragraph 212 of the Reasons for Decision has been corrected as follows:

The December 1939, complaint refers to the "...white man...taking half of what the Indians own" (CBD at tab 181).

[25] Point 3 of paragraph 218 of the Reasons for Decision has been corrected as follows:

The process of reserve creation in B.C. culminated on July 29, 1938, with the conveyance of land set apart and approved as reserves was transferred to Canada by Provincial OIC 1036.

[26] Point 1 of paragraph 219 of the Reasons for Decision has been corrected as follows:

What principles of fiduciary law apply to a determination of whether the Crown had fiduciary duties to the Claimant in relation to the Additional Land allotted by the Commission and the land omitted from the 1884 allotment?

[27] The first and fifth sentence of paragraph 245 of the Reasons for Decision have been corrected as follows:

The treatises fill in the picture of the events of the past six decades.

It fails to take into account that the Province had achieved its primary objective, namely the removal of valuable land previously allotted by the JIRC from land to be transferred to Canada.

[28] In section IX. Analysis, C. Honour of the Crown, sub-heading 1. Reserve Creation in British Columbia and a) Context, Purpose, and the Promise of the Reasons for Decision has been corrected as follows:

1. Reserve Creation: The Purpose and the Promise

[29] The first and second sentence of paragraph 288 and the reference after the quote of the Reasons for Decision have been corrected as follows:

It is instructive with respect to the present matter to consider the reasons why, in *Manitoba Métis Federation*, no fiduciary duty was found. It was found that delay in the implementation of the *Manitoba Act*, amounted to a breach of Crown Honour.

[emphasis in original; *Manitoba Métis Federation*, at para 53]

[30] Section IX. Analysis, sub-heading G. The Additional Land Issue of the Reasons for Decision has been corrected as follows:

X. THE ADDITIONAL LAND ISSUE

HARRY SLADE

Honourable Harry Slade, Chairperson