

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**KAHKEWISTAHAW FIRST NATION**

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
February 4, 2013	
Amy Clark	
Ottawa, ON	13

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

As represented by the Minister of Aboriginal Affairs and Northern Development Canada

Respondent

---

**APPLICATION FOR LEAVE and APPLICATION FOR PRODUCTION**  
**Pursuant to Rules 29, 30, 34 and 57 of the**  
***Specific Claims Tribunal Rules of Practice and Procedure***

---

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
Department of Justice Canada  
Prairie Region  
123 – 2<sup>nd</sup> Avenue South, 10<sup>th</sup> Floor  
Saskatoon, SK S7K 7E6  
Tel: (306) 975-6455 / (306) 975-5870  
Fax: (306) 975-5013  
E-Mail: saskSCT-5004-11-kahk@justice.gc.ca

**APPLICATION FOR LEAVE and APPLICATION FOR PRODUCTION**

**TAKE NOTICE** that an application will be made on behalf of the Claimant, KAHKEWISTAHAW FIRST NATION, before the Specific Claims Tribunal (the “Tribunal”), at a time and place to be determined by the Tribunal, for the following relief:

- (a) An Order for leave of the Tribunal to bring an application; and
- (b) An Order requiring the Respondent to provide the Claimant with copies of all documents listed in Schedule “A” attached hereto (collectively referred to as the “Subject Documents”) within ten (10) days of the date of this Order.

**AND TAKE NOTICE** that this Application is brought on the following grounds:


1. In their Declaration of Claim, the Claimant claims that the Respondent wrongfully expended the Claimant’s monies deposited into the Capital and Revenue Accounts maintained by the Respondent for the Claimant;
2. In preparation for a hearing in this matter, the Claimant commissioned research to be conducted by Joan Holmes & Associates Inc. into the management and administration of trust fund monies, including the legislation, policies and practices concerning the use of trust fund monies by the Respondent;
3. As part of their research, Joan Holmes & Associates Inc. reviewed files at Library and Archives Canada relating to the management and administration of trust fund monies;
4. During their review of the files at Library and Archives Canada, Joan Holmes & Associates Inc. discovered that the Subject Documents, including correspondence between governmental departments on the question of the expenditure of trust fund monies, had been removed from the files at Library and Archives Canada under section 23 of the *Access to Information Act*, which states that “*the head of a government institution may refuse to disclose any record requested under this Act that contains information that is subject to solicitor-client privilege*”;

5. While the Claimant has not seen the Subject Documents they are of the view that the Subject Documents are not confidential communications between a solicitor and their client for the purpose of seeking or giving legal advice and are not subject to solicitor-client privilege and are not otherwise privileged from disclosure or production in legal proceedings;
6. The Subject Documents will yield relevant information that will be of assistance to the Tribunal and the parties on the disposition of the matter;
7. The Claimant requires the Subject Documents to prepare for the hearing in this matter;
8. The Subject Documents are within the possession and power of the Respondent;
9. The Claimant has requested production of the Subject Documents from the Respondent, but the Respondent has refused to voluntarily produce the Subject Documents; and
10. The Claimant relies on Rules 29, 30, 34 and 57 of the *Specific Claims Tribunal Rules of Practice and Procedure*.

**AND FURTHER TAKE NOTICE** of the following:

- (a) The Respondent has consented to the Claimant's Application for Leave to Bring an Application; and
- (b) The Respondent has not consented to the Claimant's Application for Production of the Subject Documents.

**DATED** at the City of Saskatoon, in the Province of Saskatchewan, this 4<sup>th</sup> day of February, 2013.

  
STEPHEN M. PILLIPOW  
Solicitor for the Claimant

THE W LAW GROUP  
Barristers and Solicitors  
300-110 21<sup>st</sup> Street East  
Saskatoon, SK S7K 0B6  
Telephone: (306) 244-2242  
Direct Line: (306) 665-9530  
Facsimile: (306) 652-0332  
E-mail: spillipow@wlawgroup.com

**SCHEDULE A**

1. Memorandum from Director to Deputy Minister, dated September 25, 1943;
2. Correspondence from Solicitor to Deputy Minister, dated November 25, 1947;
3. Correspondence from Deputy Minister Department of Justice to Deputy Minister Mines and Resources, dated August 28, 1946;
4. Correspondence from Solicitor to Hoey, dated 1946;
5. Correspondence from Deputy Minister Department of Justice to Treasury Board, dated December 11, 1944;
6. Correspondence from Deputy Minister Department of Justice to Indian Affairs, dated August 19, 1946;
7. Correspondence from Deputy Minister Department of Justice to Treasury, dated April 15, 1946;
8. Correspondence from Deputy Minister Department of Justice, dated March 23, 1938;
9. Correspondence from Deputy Minister Department of Justice, dated August 17, 1946;
10. Correspondence from Director, dated July 28, 1945;
11. Correspondence from Director to Allan, dated July 27, 1945;
12. Correspondence from Deputy Minister Department of Justice to Treasury, dated April 18, 1945;
13. Correspondence from Deputy Minister Department of Justice to Treasury, dated December 11, 1944;
14. Correspondence from Deputy Minister Department of Justice to Allan, dated November 14, 1944; and
15. Correspondence from Assistant Deputy Minister Department of Justice to Secretary of Mines and Resources, dated November 2, 1944.