

I. Claimant (R. 41(a))

1. The Claimant, Ahousaht First Nation ("Ahousaht") 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. Ahousaht originally filed a claim entitled the Allotment of Marktosis IR 15 respecting various alleged breaches of Canada's fiduciary duties, statutory duties and/or their duty of care owed to Ahousaht on February 15, 2001.
4. In a letter dated August 6, 2009, Canada stated "it is the decision of the Minister of Indian Affairs and Northern Development not to accept the Allotment of Marktosis IR 15 specific claim for negotiation 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. Ahousaht does not seek compensation in excess of \$150 million for the purposes of the Marktosis IR 15 Specific Claim.

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 section 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:

(a) a failure to fulfil a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;

(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. Commissioner O'Reilly's ("O'Reilly") mandate was, as indicated in Federal Order in Council 1334, to allot reserve lands after ascertaining "accurately the requirements of the Indian Bands". Following his appointment, O'Reilly was instructed by the Deputy Superintendent General of Indian Affairs to be, *inter alia*, "especially careful not to disturb the Indians in the possession of any villages, fur trading posts, settlements, clearings, burial places and fishing stations occupied by [the Indians] and to which they may be specially attached".
8. In June of 1889, O'Reilly spent a week in the vicinity of Clayoquot Sound, during which he allotted some 29 reserves for the four First Nations groups he found there, Ahousaht being one of them.
9. On June 22, 1889, O'Reilly met with the Ahousaht and Manhousaht Chiefs and laid out four reserves including the Marktosis I.R. 15 ("Marktosis"). On June 23, 1889, O'Reilly laid out eight more reserves; four each for the Ahousaht and the Manhousaht.

10. Marktosis once served as the principal village site of the Ahousaht. In O'Reilly's own words, the reserve lands were "rocky, and of small value; a few potato patches at the rear of the village (aggregating perhaps $\frac{1}{4}$ acre) are cultivated, but there is little prospect of these being enlarged". The Ahousaht Reserves were surveyed by Surveyor Devereaux in September of 1892, wherein he describes Marktosis as "worthless, consisting of rock and moss" and "nothing done in the way of cultivation on the whole reserve".

11. The land to the south was economically and culturally connected to the village located on Marktosis. It had been reported as "a valuable gathering site, supplying cranberries, shellfish, cedar bark and canoe logs"; the site of "a valuable sockeye fishery"; and, the site of "two burial grounds". The report is entitled "*Clayoquot Sound Indian Land Use*" prepared for MacMillan Bloedel Limited, Fletcher Challenge Canada and the B.C. Ministry of Forest by Randy Bouchard and Dorothy Kennedy in November 1990 (the "Report"). It provides evidence of Indian place names to the south and north of Marktosis on Lots 363 and 1296 respectively. Map 6 attached to the Report shows Site 439 on Lot 363, as a place where the Ahousaht hunted for water fowl. Map 5 shows sites 420 and 421 on Lot 363. Site 420 is a long beach and the location of a former village site. The beach had burial sites on the south and north end according to an informant. Site 421 is a former lake that was drained around 1900 where there was once sockeye and a place where bog cranberries were found.

12. The lands adjacent to the southern boundary of Marktosis were described as "relatively flat and accessible, suitable for housing and development". These lands were available for allotment in 1889.

13. O'Reilly excluded these important sites from his allotment of Marktosis which was contrary to the instructions for allotment of reserve lands.

14. In 1904, Lot 363, comprising 140 acres was Crown granted to the Board of Trustees of the Presbyterian Church in Canada. This is the area that the Ahousaht claim should have been included in its reserve lands.
15. In 1914, the Chief of Ahousaht complained to the Royal Commission that his people did not raise vegetables because there was no room on Marktosis.
16. A feasibility study, written by Gary Carrothers, a consultant for the Ahousaht in December of 1999, further verifies that the lands of Marktosis are largely unsuitable for housing or development.

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

17. This claim is brought on the grounds that O'Reilly's, as agent of the Crown, breached his fiduciary obligations and duty of care owed to the Ahousaht by:
 - a. failing to accurately ascertain the requirements of the Ahousaht;
 - b. failing to allot sufficient lands (in quality and size) to meet their needs;
 - c. failing to allot lands that were clearly Indian "clearings, burial places and fishing stations occupied by them and to which they may be specially attached", and
 - d. in particular, by failing to allot the lands comprising Lot 363 as part of Marktosis I.R. 15.

18. Ahousaht seeks compensation from Canada for the failure to allot adequate reserve lands and, in particular, Lot 363.

Dated this 18th of June, 2012



Stan H. Ashcroft
Counsel for the Claimant

Ashcroft & Company
Barristers & Solicitors
#205 – 1544 Marine Drive
West Vancouver, BC V7V 1H8
Phone: (604) 913-1611
Fax: (604) 913-1622
Email: stan@ashcroftlaw.com