



S= 161339

Court File No.

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHIEF RONALD GIESBRECHT on his own behalf and on behalf of all
members of the **KWIKWETLEM FIRST NATION**

PLAINTIFF

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, THE
GREATER VANCOUVER REGIONAL DISTRICT, THE BRITISH
COLUMBIA HOUSING MANAGEMENT CORPORATION, THE
CORPORATION OF THE CITY OF PORT COQUITLAM, THE
MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE
OPERATIONS AND THE PROVINCIAL RENTAL HOUSING
CORPORATION**

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must:

- a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- b) send a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must:

- a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- b) serve a copy of the filed response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for response to civil claim described below.

Time for Response to Civil Claim

A response to civil claim must be filed and served on the Plaintiff(s):

- a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed Notice of Civil Claim was served on you;
- b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Notice of Civil Claim was served on you;
- c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Notice of Civil Claim was served on you; or
- d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

The Parties

The Plaintiffs

1. The Kwikwetlem First Nation ("Kwikwetlem") is an Aboriginal people within the meaning of s.35 of the *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11.
2. Kwikwetlem have existed as a distinct Aboriginal people with a common shared territory, language, culture, values, customs, practices, traditions and spiritual beliefs before and at the time the Crown asserted sovereignty over what is now British Columbia in 1846.
3. Ronald Giesbrecht brings this action on his own behalf and as a representative of all Kwikwetlem members.
4. Ronald Giesbrecht is a member of the Kwikwetlem First Nation, a band within the meaning of the *Indian Act* RSC 1985, c I-5 (the "Indian Act"). Ronald Giebrecht is the elected Chief of the Kwikwetlem.

The Defendants

5. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia (“British Columbia” or the “Province”) has legislative jurisdiction over lands, including foreshore lands and riverbeds, in British Columbia pursuant to subsections 92(5) and 92(13) of the *Constitution Act, 1867* subject to the rights and interests of the Kwikwetlem.
6. British Columbia is vested with the administration, control and beneficial interest in provincial Crown lands subject to rights and interests of others, including Kwikwetlem, pursuant to s.109 of the *Constitution Act, 1867*;
7. British Columbia is the registered owner in fee simple of the Colony Farm Forensic Psychiatric Institute lands with a parcel identifier number of 023-366-567 and legal description LOT B DISTRICT LOTS 22 AND 33 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP27442 (the “BCBC Lands”). The BCBC Lands, previously administered by the British Columbia Buildings Corporation, were transferred to and vested in the Province pursuant to the *Public Agency Accommodation Act*, SBC 2006, c 7. The Ministry of Technology, Innovation and Citizens’ Services (“Shared Services”) administers the BCBC Lands on behalf of British Columbia.
8. British Columbia is the registered owner in fee simple of the lands adjacent to Coquitlam Indian Reserve No. 2 and Gates Park with parcel identifier 000-928-470 and legal description PARCEL B DISTRICT LOT 170 GROUP 1 NEW WESTMINSTER DISTRICT REFERENCE PLAN 66108; and parcel identifier 000-928-399 with the legal description PARCEL A DISTRICT LOT 305 GROUP 1 NEW WESTMINSTER DISTRICT REFERENCE PLAN 66108 (“Other Provincial Crown Lands”).
9. The Defendant, the Minister of Forests, Lands and Natural Resource Operations (“Minister of FLNRO”), with the consent of the Lieutenant Governor in Council, has the power to designate as a wildlife management area land that is under its administration pursuant to section 4 of the *Wildlife Act*, RSBC 1996, c 488. The Minister of FLNRO is responsible for the designation and management of the Coquitlam River Wildlife Management Area

(“Wildlife Management Area”), which has a parcel identifier 000-929-611 and legal description Parcel A of DLs 22 and 23, Group 1, NWD, Reference Plan 66109.

10. The Defendant, Provincial Rental Housing Corporation (“PRHC”) is incorporated under the *Business Corporations Act*, SBC 2002, c 57. The PRHC is a corporate Crown agent. The PRHC is the registered owner in fee simple of the Riverview Hospital Lands (“Riverview Lands”), with a parcel identifier number of 023-052-716 and legal description LOT 1 DISTRICT LOTS 60,170 AND 305 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP22802.
11. The Defendant, British Columbia Housing Management Commission (“BC Housing”) was established by Order-In-Council 3746/67 under the *Ministry of Lands, Parks and Housing Act*, RSBC 1960, c. 183. BC Housing manages the Riverview Lands on behalf of British Columbia pursuant to the *British Columbia Housing Management Commission Regulation*, BC Reg 490/79.
12. The Defendant, the Greater Vancouver Regional District (“GVRD”) is a regional government for a number of member municipalities, including the City of Coquitlam. The GVRD operates as “Metro Vancouver” under the *Local Government Act*, RSBC 1996 ch 323. The GVRD is the registered owner in determinable fee simple the Colony Farm Regional Park (“Colony Farm”), which has the parcel identifier 023-366-541 and legal description LOT A DISTRICT LOTS 22, 23, 60 AND 170 GROUP 1 NEW WESTMINSTER DISTRICT.
13. The Defendant, the Corporation of the City of Port Coquitlam (“Port Coquitlam”) operates as a government under the *Local Government Act* whereby it owns and maintains the following parcels of land (collectively “Port Coquitlam Lands”):
 - a. Gates Park which has a parcel identifier 017-862-094 and legal description DISTRICT LOT 7632, NEW WEST DISTRICT EXCEPT PLAN LMP11820, LMP34067, DEDICATED PARK, BYLAW 1563, REEVE STREET PARK;

- b. Nacht Park which has a parcel identifier 023-242-469 legal description LOT A DISTRICT LOT 342 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP25929, including the long narrow portion of land which extends north/south to a parcel of land with the identifier 012-502-316 located at the southern portion of Coquitlam I.R No. 2;
- c. Sitka Spruce Park which has a parcel identifier 017-947-685 and legal description LOT 2 EXCEPT PART IN PLAN BCP233 DISTRICT LOTS 290 AND 342 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP6736;
- d. Lands north of Coquitlam I.R No. 2 with a parcel identifier 027-093-115 and legal description LOT 2 DISTRICT LOT 174 GROUP 1 NEW WESTMINSTER DISTRICT PLAN BCP30152, including the Old Pitt River Road which is also owned by Port Coquitlam and the land connecting the Road, parcel and Coquitlam I.R No. 2;
- e. Lands west of Coquitlam I.R No. 2 (collectively “South Shaughnessy Lots”): with parcel identifier 018-022-812 and legal description LOT 3 EXCEPT: PART SUBDIVIDED BY PLAN LMP25384, DISTRICT LOT 290 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP7676; parcel identifier 018-022-791 and legal description LOT 1 DISTRICT LOT 290 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP7676; parcel identifier 018-022-847 and legal description LOT 4 EXCEPT: FIRSTLY: PART SUBDIVIDED BY PLAN LMP25384, SECONDLY: PART DEDICATED ROAD ON PLAN LMP25929 DISTRICT LOT 290 AND 342 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP7676; and the right of way which connects Shaughnessy Street to Coquitlam I.R No. 2; and
- f. Lands southwest of Coquitlam I.R No 2 with parcel identifiers 012-502-316, 012-502-341, 012-502-367, 012-502-391, 012-502-405, 012-502-421, 012-502-430, 012-502-456, 012-502-472, 012-502-481, 012-502-502, 012-502-511, 012-502-529 and legal description LOTS 1-13 DISTRICT LOT 342 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 2133, including the right of way below these lots which runs east to west and connects to Shaughnessy Street.

Kwikwetlem Aboriginal Title in and around the Coquitlam Watershed

Kwikwetlem as a Distinct Aboriginal Group

14. Before and at the time of asserted European Sovereignty, the Kwikwetlem were a distinct Aboriginal people and were recognized as an independent and distinct group.
15. The Kwikwetlem are uniquely tied to the Coquitlam watershed, deriving their name from a unique sockeye salmon that once ran in abundance in the Coquitlam River and Coquitlam Lake. Creation stories distinctly tie Kwikwetlem to the Coquitlam watershed at a time where everything was first created.

Kwikwetlem Territory

16. The Kwikwetlem used and exclusively occupied lands which encompass the Coquitlam River watershed and adjacent lands and waterways at the time of Sovereignty ("Territory").
17. The Kwikwetlem exclusively used and occupied their Territory at Sovereignty in a variety of different ways. These uses included:
 - a) Establishment of sites for permanent and seasonal settlements;
 - b) Harvesting of plants, roots, shoots, berries, medicines and organic materials used for various technologies;
 - c) Cultivating;
 - d) Practicing seasonal rounds;
 - e) Harvesting of game and wildlife (for food and trade);
 - f) Harvesting of a variety of fish, including sturgeon, eulachon, trout, catfish, carp and all species of salmon, the sockeye salmon in particular;
 - g) Establishment of fishing sites and related infrastructure, including weirs;
 - h) Establishment of sites for processing and preserving fish, plants and berries;
 - i) Travel on land and water;
 - j) Trade;
 - k) Burial, ceremonial and spiritual activities; and

- 1) Story telling as a way of identifying landmarks, transformer sites and locating supernatural events.

18. The Kwikwetlem as they exist today are the continuation of the Kwikwetlem as they existed at the time of Sovereignty, as such, the Kwikwetlem continues to hold any Aboriginal title held by Kwikwetlem at the time of Sovereignty.
19. Despite the Defendants disregard of Kwikwetlem's Aboriginal rights and title, Kwikwetlem continues to place great importance in retaining an intimate and spiritual connection to its Territory. However, Kwikwetlem's relationship to its Territory has been severely impaired by the Defendants conduct.

Kwikwetlem Claim Area

20. The Claim Area consists approximately of those areas of Kwikwetlem's Territory shaded in red (Riverview Lands), yellow (Colony Farm), beige (Port Coquitlam Lands) and blue (Provincial Crown Lands) on the maps attached as Schedule "A" Detailed View and Schedule "B" Overview. The Claim Area only includes those lands which are managed or owned by the named Defendants and excludes Lougheed Highway and privately held land.
21. The Claim Area, while not constituting the entirety of Kwikwetlem's Aboriginal title land, is of particular present concern to the Kwikwetlem for the purpose of this litigation.
22. The majority of Kwikwetlem's Territory has been taken up by development and the urban centers of Coquitlam and Port Coquitlam. The Claim Area represents a very small proportion of Kwikwetlem's entire Territory but represents a large proportion of the last remaining accessible and usable undeveloped Crown land in Kwikwetlem's Territory.

Riverview Lands

23. The Riverview Lands consist of 244 acres of land located in the heart of the Coquitlam watershed within close proximity to Kwikwetlem's village sites and the Coquitlam and Fraser Rivers. The Riverview Lands are outlined in red on the maps attached as Schedule "A" and "B". Kwikwetlem used the Riverview Lands for hunting, harvesting, preserving,

settlement, refuge, burial, ceremonial activities, travelling and otherwise using resources in the area.

Colony Farm

24. Colony Farm is a Regional Park located immediately between Kwikwetlem's two Indian Reserves, I.R No. 1 and I.R No. 2 and hugs the shores of the Coquitlam River. The Colony Farm Lands are outlined in yellow on the maps attached as Schedule "A" and "B". Kwikwetlem used Colony Farm for hunting, fishing, harvesting, cultivating, preserving, settlement, burial, travelling and otherwise using resources in the area.

Provincial Crown Lands

25. The BCBC Lands consist of sixty-eight (68) acres of land and is the site of the Colony Farm Forensic Psychiatric Institute, located immediately adjacent to Coquitlam Indian Reserve No. 1 and both the Coquitlam and Fraser Rivers. The BCBC Lands are outlined in blue on the maps attached as Schedule "A" and "B". Kwikwetlem used the BCBC Lands for hunting, fishing, harvesting, travelling, for cultural and spiritual purposes, and otherwise using resources in the area.
26. The Coquitlam Wildlife Management Area is managed by the Minister of FLNRO and consists of approximately forty (40) acres located at the confluence of the Coquitlam and Fraser Rivers. The Wildlife Management Area is outlined in blue on the maps attached as Schedule "A" and "B". The Wildlife Management Area represents one of the most significant portions of land within Kwikwetlem's Territory as a locale for fishing, hunting, gathering, travelling and settlement. Additionally, this area is an important spiritual site for Kwikwetlem, as it was at the mouth of the Coquitlam River where many sources of life were first created by Khaals the Creator and where Khaals transformed the leader of the Kwikwetlem into stone, forever connecting the Kwikwetlem to the Coquitlam River.
27. Directly north of Colony Farm are provincial Crown Lands that are contiguous with Coquitlam Indian Reserve No. 2 and Gates Park, and are outlined in blue on the maps

attached as Schedule “A” and “B”. Kwikwetlem used these lands for hunting, fishing, harvesting, travelling, for cultural and spiritual purposes, and otherwise using resources in the area.

Port Coquitlam Lands

28. The Port Coquitlam Lands consists of Gates Park, approximately 128 acres, and the lands surrounding and adjacent to the Coquitlam Indian Reserve No. 2, which are outlined in beige on the maps attached as Schedule “A” and “B”. Kwikwetlem used the Port Coquitlam Lands for hunting, fishing, harvesting, travelling, settlement, spiritual and cultural purposes, and otherwise using resources in the area.

Kwikwetlem Aboriginal Title to Claim Area

29. As part of the lands exclusively occupied by Kwikwetlem, at and before Sovereignty, Kwikwetlem exclusively occupied lands the Claim Area. Kwikwetlem holds Aboriginal title to these lands which, for the purposes of this litigation, make up the Claim Area.

Kwikwetlem has Little Territory left to enjoy Title Benefits

30. Kwikwetlem’s two Indian reserves (Coquitlam I.R No. 1 and Coquitlam I.R No. 2) make up less than eighty-five (85) hectares. Coquitlam I.R No. 2 is approximately eighty-one (81) hectares. However, it is largely inaccessible to Kwikwetlem and due to the nature of the land is difficult to develop. Kwikwetlem is therefore left with less than three hectares of usable reserve land. Many of the lands in the Claim Area, and in particular the Port Coquitlam Lands, would provide much needed, but currently denied, access to Coquitlam I.R. 2.
31. Moreover, the Province failed to protect Kwikwetlem’s reserves when it constructed the dyke system; Kwikwetlem’s reserves are in front of the dykes whereas all other properties are behind the dyke, leaving Kwikwetlem’s reserve land as the only land at a serious risk of flooding along the flood plain.

32. Furthermore, the land within Kwikwetlem's Territory, including the lands surrounding Kwikwetlem's reserves, has become increasingly developed to a point where Kwikwetlem is left with virtually nowhere in its Territory to exercise and benefit from its Aboriginal title.

Infringement of the Plaintiff's Aboriginal Title

33. The Defendants hold legal and beneficial interests in the Claim Area, which are subject to the Aboriginal title of the Kwikwetlem. The Defendants have exercised their jurisdiction in the Claim Area in a manner that infringes Kwikwetlem's right to determine how the land is used, the right to use and manage the land, and the right to benefit from the land. In doing so, the Defendants have impaired Kwikwetlem's ability to exercise its Aboriginal title within its Territory and the Claim Area. The Defendants have infringed Kwikwetlem's Aboriginal title in the Claim Area.

Riverview Lands

34. The Riverview Lands have been used as a site of the Riverview Hospital, a residential treatment facility for the mentally ill for more than a century. Kwikwetlem was not consulted prior to the creation of the Riverview Hospital, nor were they compensated for British Columbia's use of the Lands for more than a century. Kwikwetlem opposed having the Hospital in their Territory for more than a century and have faced consequences of having mentally ill patients and patient escapees within close proximity to their reserve. The use of the Riverview Lands as a Hospital for the mentally ill was incompatible with Kwikwetlem's Aboriginal title and has interfered with and infringed Kwikwetlem's Aboriginal title to the Riverview Lands for more than a century.
35. The Riverview Hospital was closed in 2012. At this point the Province no longer required the Riverview Lands to operate the facility. Rather than handing the lands back over to Kwikwetlem, British Columbia initiated a planning process to be led by BC Housing, to determine future uses for the Riverview Lands. Kwikwetlem entered into a Protocol Agreement with BC Housing with the intention of having their Aboriginal rights and title recognized and accommodated within the Riverview Lands. While this Agreement has provided for consultation during the planning process, Kwikwetlem's ability to make

decisions and derive economic benefits from the Riverview Lands, remains significantly limited.

36. Kwikwetlem continues to be denied the right to use, occupy and benefit from the Riverview Lands or to make decisions concerning the uses to which the lands will be put. As a result, British Columbia infringes Kwikwetlem's Aboriginal title to the Riverview Lands.

Colony Farm

37. Colony Farm began as part of the Riverview Hospital Lands in 1904 for the mentally ill as a means of producing food for the Hospital patients. The creation and operation of Colony Farm was done without consultation or compensation to Kwikwetlem. Further, Kwikwetlem was harmed by its operation as evidenced by the risk of injury to Kwikwetlem members by Hospital patients.
38. The Province closed Colony Farm in 1983 at which point they no longer needed the Farm to support the Riverview Hospital. Various interest groups expressed a desire to keep Colony Farm free from development. These efforts culminated in the creation of Colony Farm as a Regional Park in 1995. At no point between 1983 and 1995 was the land offered to Kwikwetlem for their use and benefit. When the Province decided to turn Colony Farm into a Regional Park, it transferred the land to the GVRD in 1996. This was done without Kwikwetlem's consent or any attempts to obtain Kwikwetlem's consent which is an exercise of power that infringed Kwikwetlem's Aboriginal title.
39. Today, Colony Farm is owned and operated by the GVRD to support agricultural uses and passive recreation. The Farm is part of the Agricultural Land Reserve. The GVRD interferes with Kwikwetlem's ability to make decisions about what uses the land should be put and to benefit economically from the land. This has and continues to limit and interfere with Kwikwetlem's access to and use of the area, their ability to hunt, fish and otherwise harvest resources in the area. As a result, the establishment and continued operation of the Regional Park to limit Kwikwetlem's access, control and use of the area, constitutes an infringement of Kwikwetlem's Aboriginal rights and title within Colony Farm.

40. To date, no compensation has been paid to Kwikwetlem for the use and occupation of the Colony Farm lands; therefore, Kwikwetlem's right to benefit from the land pursuant to their Aboriginal title has also been infringed by the Defendant, GVRD.

Provincial Crown Lands

41. The BCBC Lands vest in the Province and are managed by Shared Services. A portion of the Lands are currently used for the Colony Farm Forensic Psychiatric Institute ("FPI") while other portions have been identified as surplus Crown lands. All of the BCBC Lands are part of the Agricultural Land Reserve, which significantly limits the uses to which the lands can be put. The Province acknowledges that portions of the BCBC Lands are surplus Crown lands yet continues to deny Kwikwetlem the right to use, occupy and benefit from the lands or decide what uses the lands should be put.
42. The totality of the above interferes with Kwikwetlem's right to decide the uses to which these lands should be put. It furthermore interferes with Kwikwetlem's ability to use, occupy and benefit from the BCBC Lands and therefore constitutes an infringement to Kwikwetlem's Aboriginal title to the BCBC Lands by the Defendant, British Columbia.
43. The Coquitlam River Wildlife Management Area was designated as a Wildlife Management Area on December 15, 1994 and is currently managed by the Ministry of FLNRO. The management objectives for the Area are to limit access, even for recreational opportunities, to preserve the wildlife and habitat in the Area. The designation and management of this Area as a Wildlife Management Area has and continues to interfere with Kwikwetlem's ability to use, occupy and benefit from the lands within the Area and therefore constitutes an infringement to Kwikwetlem's Aboriginal title, by the Defendant the Minister of FLNRO.
44. Kwikwetlem has also been excluded from using the other Provincial Crown lands immediately adjacent to Coquitlam I.R. No.2, benefitting from the land or deciding the uses to which it is put.

45. The Province has improperly considered and accommodated Kwikwetlem's Aboriginal title within the Claim Area. The conduct of the Province amounts to infringement to Kwikwetlem's Aboriginal title within the Claim Area.

The Port Coquitlam Lands

46. In 1977 the City of Port Coquitlam designated portions of land it owned as Public Parks, which included the creation of Gates Park in 1978. The City designated Gates Park without any consultation with Kwikwetlem despite the fact that Gates Park is located immediately adjacent to Coquitlam I.R. No. 2 and is an area of significant value to Kwikwetlem. Kwikwetlem has not been included in any meaningful decision making regarding the lands within Gates Park. Kwikwetlem receives no revenue or accommodation from the City of Port Coquitlam for its continued use of Gates Park as a Public Park. The designation of Gates Park as a Public Park has and continues to interfere with Kwikwetlem's ability to use, occupy and benefit from the lands within Gates Park and constitutes an infringement to Kwikwetlem's Aboriginal title.
47. Kwikwetlem has similarly been excluded from any meaningful decision making regarding how the other Port Coquitlam Lands are managed, despite those lands being situated immediately adjacent to Coquitlam I.R No 2. As such, Kwikwetlem has been excluded from using the land, benefitting from the land or deciding the uses to which it is put constituting an infringement to Kwikwetlem's Aboriginal title.

Need for Effective Remedy

48. British Columbia has not provided an effective means to recognize or implement Aboriginal title where it has been found to exist. In particular, British Columbia has not:
- a. provided any means to record and register interests in land held pursuant to Aboriginal title;
 - b. provided any means to register interests in land granted by or created by a First Nation holding Aboriginal title;

- c. provided a means to implement decisions made by a First Nation concerning lands held pursuant Aboriginal title; and
- d. provided a means to allow a First Nation to enjoy the economic benefits provided by lands held pursuant to Aboriginal title.

49. As a result of this failure, First Nations have been put at a significant disadvantage compared to other holders of interests in land in British Columbia and have been effectively denied the benefit of Aboriginal title.

50. In order for Kwikwetlem to enjoy the full benefit of its Aboriginal title, British Columbia must provide effective means that:

- a. allow a First Nation to record and register lands held pursuant to Aboriginal title;
- b. allow a First Nation to record and register interests in lands granted by or created by the First Nation in lands held pursuant to Aboriginal title;
- c. allow a First Nation a means to implement decisions it makes in respect of the use of lands held pursuant to Aboriginal title; and
- d. allow a First Nation a means of enjoying the economic benefits conferred by Aboriginal title.

Kwikwetlem's Efforts to Assert its Title and Seek Reconciliation

No Effective Administrative Means to Determine Kwikwetlem's Aboriginal Title Claim

51. Kwikwetlem has attempted to have the Crown address the concerns that it has about the ongoing infringement of Kwikwetlem's Aboriginal title and Aboriginal rights. It has done this in a number of ways.

52. First, Kwikwetlem has notified British Columbia of its asserted Aboriginal title and Aboriginal rights and has asked British Columbia, and other relevant governmental bodies, to respect these rights or to enter into negotiations with a view to recognizing, protecting or accommodating Kwikwetlem's rights. With a few limited exceptions, the Crown has refused to do this.

53. Second, Kwikwetlem has also sought to enter into modern day treaty negotiations with the Crown under the auspices of the British Columbia Treaty Commission, but British Columbia has refused to enter into such negotiations with Kwikwetlem.
54. Third, British Columbia has not provided any effective administrative means of recognizing, protecting and, if necessary adjudicating the existence, scope and extent of Kwikwetlem's Aboriginal title, prior to decisions being made that either compromise or have the potential to adversely impact or infringe Kwikwetlem's Aboriginal title.
55. The British Columbia Supreme Court does not provide an adequate means of recognizing, protecting and, if necessary, adjudicating the existence, scope and extent of Kwikwetlem's Aboriginal title, prior to decisions being made that have the potential to unjustifiably infringe Kwikwetlem's Aboriginal title in that:
- a. the judicial processes provided for the review of government decisions is not well suited for the determination of issues related to the existence, scope and protection of Aboriginal title in a timely way prior to such decisions taking effect;
 - b. the judicial processes provided for the review of government decisions do not allow for reasonably accessible interim relief prior to the final determination of the existence, scope and protection of Aboriginal title prior to such decisions taking effect;
 - c. the judicial processes provided for the review of government decisions or generally determining the existence, scope and protection of Aboriginal title are practically inaccessible to most First Nations due to the costs associated with accessing such processes; and
 - d. the judicial processes provided for the review of government decisions or generally determining the existence, scope and protection of Aboriginal title are practically unable to give effective relief in most or all cases.

Unlike Fee Simple, British Columbia Does Not Give Aboriginal Title Land Protection

56. Furthermore, whether recognized by judicial determination or other means, British Columbia does not provide any statutory or regulatory means of determining:

- a. when compensation will be paid on account of Crown decisions that adversely affect or effectively appropriate Aboriginal title land;
- b. how compensation will be determined when a Crown decision adversely affects or effectively appropriates Aboriginal title land; or
- c. how disputes concerning compensation will be determined in a timely and cost effective manner.

57. By contrast, persons holding tenures in the nature of fee simple or other common law tenures are afforded access to:

- a. clear documentation describing the nature and extent of their interests;
- b. a statutory land title registry that ensures secure and transparent recording of such common law interests in land;
- c. a statutory land title registry that ensures that notice is given of the existence and nature of such common law interests in land;
- d. a statutory system that ensures that compensation is paid when errors in the recording of such common law interests in land are made;
- e. a statutory system for summarily determining in a cost-effective manner when disputes over the existence and boundaries of such common law interests in land; and
- f. a statutory system that provides for the timely and fair payment of compensation when government decisions injuriously affect or appropriate such common law interests.

Non-Aboriginal Entities Disproportionately Hold Fee Simple-Like Interests

58. In British Columbia, common law fee simple or similar interests are disproportionately held by non-Aboriginal persons or corporations given that:

- a. historically Indians having status under the *Indian Act* were not qualified to hold such interests in land;
- b. historically Indians were prohibited from pre-empting lands in British Columbia without the special permission of the Lieutenant Governor in Council;

- c. First Nations could not access the value of the lands that were reserved for them as “reserves” under the *Indian Act* for the purpose of raising capital to acquire lands; and
- d. bands and First Nations are not recognized as legal persons and thus are unable to register fee simple or other interests in the registry.

Effects of The Unequal Treatment

59. The effects of this exclusion of Aboriginal title from the statutory regime allowing for the registration of other common law interests, as well as from the legal regime providing for the identification of other interests and compensation for injurious affection or appropriation, include, but are not limited to:

- a. the reinforcement of the historical stereotype that Aboriginal peoples did not have land rights or land rights worthy of protection;
- b. the reinforcement of the understanding that Aboriginal title is a lesser right undeserving of effective protection; and
- c. the erosion of the Aboriginal title of Aboriginal peoples.

60. This has cumulatively had the effect of:

- a. demeaning Aboriginal peoples and reinforcing the historical stereotypes of Aboriginal peoples as being less developed or less advanced than Europeans or other settlers; and
- b. leaving the unique rights of Aboriginal people, especially Aboriginal title, vulnerable to being lost, eroded or taken without compensation or accommodation.

PART 2: RELIEF SOUGHT

1. A declaration that the Plaintiffs have existing Aboriginal title to the Claim Area, or portions thereof in which the evidence establishes there exists Aboriginal title.
2. A declaration that management of the Riverview Lands unjustifiably infringes the Plaintiff's Aboriginal title.
3. A declaration that the creation of the Colony Farm Regional Park and operation and management of Colony Farm unjustifiably infringes the Plaintiff's Aboriginal title.

4. A declaration that the operation and management of the Forensic Psychiatric Institute and the BCBC Lands unjustifiably infringes the Plaintiff's Aboriginal title.
5. A declaration that the designation and management of the Coquitlam River Wildlife Management Area unjustifiably infringes the Plaintiff's Aboriginal title.
6. A declaration that the use and management of the other Provincial Crown Lands unjustifiably infringes the Plaintiff's Aboriginal title.
7. A declaration that the creation, operation and management of Gates Park unjustifiably infringes the Plaintiff's Aboriginal title.
8. A declaration that the use and management of the Port Coquitlam Lands, or portions thereof unjustifiably infringes the Plaintiff's Aboriginal title.
9. A declaration that any grant, patent or certificate of indefeasible title held in respect of any of these lands either be:
 - a. Cancelled; or
 - b. Transferred to the Kwikwetlem.
10. An order that the Defendants account for any benefit they have received flowing from or as a result of the Plaintiff's Aboriginal title in the Claim Area;
11. An order that the Defendants disgorge any such benefit received.
12. Damages, including equitable damages, arising from the unjustifiable infringement of the Plaintiff's Aboriginal title.
13. An order that British Columbia consult with Kwikwetlem with respect to the creation of effective means to:
 - a. Allow a First Nation to record and register lands held pursuant to Aboriginal title;
 - b. Allow a First Nation to record and register interests in lands granted by or created by the First Nation in lands held pursuant to Aboriginal title;

- c. Allow the First Nation a means to implement decisions it makes in respect of the use of lands held pursuant to Aboriginal title;
 - d. Allow the First Nation a means of enjoying the economic benefits conferred by Aboriginal title.
- 14. An order that if, after one year, Kwikwetlem and British Columbia are unable to agree upon an effective means to provide for the matters set out in the previous paragraph, either party will be at liberty to apply to the court in these proceedings for a further order addressing this matter.
- 15. A declaration that British Columbia has breached the Section 15 rights of the members of the Kwikwetlem First Nation by:
 - a. Failing to establish effective administrative means to recognize, protect and if necessary adjudicate the existence, scope and extent of Aboriginal title;
 - b. Failing to establish effective administrative means to provide compensation for government decisions that injuriously affect or appropriate Aboriginal title.
- 16. A declaration that British Columbia has breached the Honour of the Crown by:
 - a. Failing to establish effective administrative means to recognize, protect and if necessary adjudicate the existence, scope and extent of Aboriginal title of the Kwikwetlem prior to making decisions that could have a significant adverse effect on or unjustifiably infringe the Aboriginal title of the Kwikwetlem;
 - b. Failing to establish effective administrative means to provide compensation for government decisions that injuriously affect or appropriate Aboriginal title of the Kwikwetlem prior to making decisions that could have a significant adverse effect on or unjustifiably infringe the Aboriginal title of the Kwikwetlem.
- 17. Pre- and post- judgment interest in respect to any damages.
- 18. Costs.

19. Such further and other relief as this Honourable court may seem just.

PART 3: LEGAL BASIS

The legal basis upon which this claim is brought is based upon:

Establishment of Aboriginal Title

1. The facts establish that Kwikwetlem holds Aboriginal title to the Claim LArea, in particular:
 - a. Kwikwetlem is a distinct Aboriginal people;
 - b. Kwikwetlem occupied the Claim Area on the date that British Sovereignty was asserted; and
 - c. Kwikwetlem's occupation of the Claim Area on the date of British Sovereignty was exclusive.

Infringement of Aboriginal Title

2. The primary incidents of Aboriginal title are:
 - a. the right to exclusive use and occupation of the land;
 - b. the right to the full beneficial interest in the land; and
 - c. the right to make decisions as to how the land will be used.
3. The Defendant's occupation of the Claim Area directly interferes with Kwikwetlem's right of exclusive occupation.
4. The Defendant's asserted right to control the land, including deciding who may access the land, how the land will be presently used and how the land will be used in the future directly conflicts with and denies Kwikwetlem's right to decide how the Claim Area will be used.
5. The Defendants have also denied Kwikwetlem any right or ability to realize any meaningful economic benefit from the Claim Area.
6. These interferences with Kwikwetlem's are significant because:
 - a. they have occurred in the heart of Kwikwetlem's Territory;
 - b. they involve large and valuable tracts of land;

- c. they involve lands that represent a very large portion of the reasonably available land in Kwikwetlem's Territory where it would or could be practical to exercise and enjoy the benefit of Aboriginal title; and
 - d. they interfere with the enjoyment of Kwikwetlem's reserves.
7. As such the Defendants' use, occupation and asserted control over the Claim Area is an unreasonable interference with Kwikwetlem's Aboriginal title.

Infringement Unjustified

8. The Defendants bear the burden of demonstrating that these infringements are justified, however in this case there are a number of factors that make it impossible to satisfy this burden, including:
- a. the Defendants asserted their ownership, use and control of the land without adequate Crown consultation having first occurred with Kwikwetlem;
 - b. the Defendants do not have a substantial and compelling reason for the infringements or, in the alternative, for continuing the infringement;
 - c. the Defendant British Columbia, in infringing, continuing to infringe or in permitting the infringement did not act in a manner that was consistent with the fiduciary duty, in particular (without limitation):
 - i. It did not provide for compensation or other meaningful accommodation;
 - ii. It did not attempt to minimize the infringement; and
 - iii. It failed to ensure that the cumulative limitations or infringements of Kwikwetlem's Aboriginal title were not such as to significantly deprive Kwikwetlem of the meaningful enjoyment of its Aboriginal title.

Unjustifiable Breach of Section 15 Rights

9. The members of Kwikwetlem, individually and as a collective of individuals, are entitled to the protection of section 15 of the *Canadian Charter of Rights and Freedoms*, and, in particular, are entitled not to be subject to discrimination on the basis of race, national or ethnic origin or analogous ground (the "Section 15 Rights").

10. By failing to provide a similar or equivalent means of identifying, recording and registering Aboriginal title by means of an effective administrative process in comparison to that provided for other common law interests in land similar to fee simple, the Crown has drawn a distinction based on a prohibited ground given that:
 - a. Aboriginal title is a right enjoyed exclusively by Aboriginal peoples; and
 - b. the other rights are enjoyed predominantly by non-Aboriginal people or companies.

11. The distinction perpetuates a stereotype of Aboriginal peoples in that it relegates one of their most important legal rights that is highly analogous to fee simple or similar common law rights to a substantially lesser protection so suggesting or reinforcing the stereotypes that:
 - a. Aboriginal peoples did not and do not have land rights;
 - b. Aboriginal peoples' land rights are less worthy of protection or are not capable of being identified and recognized by the state;
 - c. Aboriginal peoples did not have rights that allowed them to enjoy the economic benefit of their lands or make decisions about the uses to which their lands should be put; and
 - d. the doctrine of *terra nullius* applied to the traditional territories of Aboriginal peoples.

12. This breach of the Section 15 Rights of Kwikwetlem and its members cannot be justified in a free and democratic society in that:
 - a. British Columbia continues to use, occupy and assert control over lands subject to asserted Aboriginal title without determining the existence, scope and extent of the Aboriginal title in that land;
 - b. British Columbia continues to make decisions that will have a significant adverse effect on Aboriginal title and, in fact, may amount to an appropriation of such lands, even when it is aware of the assertion of such title;
 - c. British Columbia has not provided any non-judicial means for determining whether and how much compensation should be paid for such lands;
 - d. The court system does not provide an adequate alternative remedy, in that:

- i. It is too expensive and the costs associated with pursuing claim will generally exceed the value of the claim;
- ii. Effective interim relief is practically unavailable;
- iii. Summary processes are not available or are of extremely limited availability for the determination of these issues;
- iv. The court process is too slow to allow determinations to be made before irreparable damage is done; and
- v. The court system has limited remedial powers, especially where third party interests have been created or may be created as a result of Crown decisions.

Breach of the Honour of the Crown

13. The Honour of the Crown is always at stake in dealings between the Crown and Aboriginal peoples in situations where the Aboriginal interests, especially Aboriginal title, are or may reasonably be at stake.

14. The Crown is under a legal duty to negotiate in good faith to resolve claims to ancestral lands.

15. In the case of Kwikwetlem, it is inconsistent with the Honour of the Crown for British Columbia to assert the right to use, occupy, own and make decisions about land that is reasonably subject to a claim of asserted Aboriginal title without taking immediate steps to:
 - a. determine in a fair and transparent process whether or not the claimed Aboriginal title exists;
 - b. determine where the claimed Aboriginal title exists;
 - c. determine the overall extent of Kwikwetlem's Aboriginal title; and
 - d. determine the extent of its obligations to protect that Aboriginal title or to avoid infringing that title.

16. This obligation arises in the context of Kwikwetlem because:

- a. Kwikwetlem's Territory has been heavily developed or otherwise rendered unsuitable for the practical exercise of Aboriginal title without the substantial displacement or disruption of third parties;
- b. There is very little usable land in the hands of the Crown or other governmental agencies;
- c. Kwikwetlem is highly disadvantaged in being able to defend its rights in court given that (1) it has a very small population; (2) its reserves are of limited economic value; and (3) it is economically impoverished;
- d. Kwikwetlem has been denied access to treaty negotiations under the auspices of the BC Treaty Commission; and
- e. Any decision to put the Claim Area or allow the Claim Area to be put to a use inconsistent with Kwikwetlem's Aboriginal title is likely to have a significant adverse effect on the amount of land available to Kwikwetlem.

Plaintiff's address for service:

JFK Law Corporation|
Suite 340 - 1122 Mainland Street
Vancouver, BC V6B 5L1

Fax number for service (if any):

604.687.2696

Email address for service (if any):

kbrooks@jfklaw.ca

Place of trial:

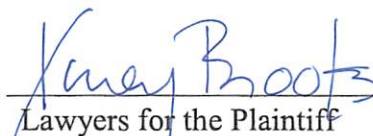
Vancouver, British Columbia

The address of the registry is:

Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

February 9, 2016

Dated


Lawyers for the Plaintiff

Robert J. M. Janes, QC and Karey M. Brooks

Rule 7-1(1) of the *Supreme Court Civil Rules* states:

- 1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - a. prepare a list of documents in Form 22 that lists

- i. all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - ii. all other documents to which the party intends to refer at trial, and
- b. serve the list on all parties of record.
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APPENDIX

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for declaratory relief in relation to the plaintiff's Aboriginal title to the lands in the Coquitlam watershed.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning:

☒ a matter not listed here

PART 3: THIS CLAIM INVOLVES:

☒ aboriginal law

☒ constitutional law

PART 4:

Business Corporations Act, SBC 2002, c 57.

British Columbia Housing Management Commission Regulation, BC Reg 490/79.

Constitution Act, 1867, 30 & 31 Vict, c 3, ss 92(5), 92(13), 109.

Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss 15, 35.

Expropriation Act, RSBC 1996, c 125.

Indian Act, RSC 1985, c I-5.

Land Title Act, RSBC 1996, c 250.

Land Title Inquiry Act, RSBC 1996, c 251.

Local Government Act, RSBC 1996 ch 323.

Ministry of Lands, Parks and Housing Act, RSBC 1960, c. 183.

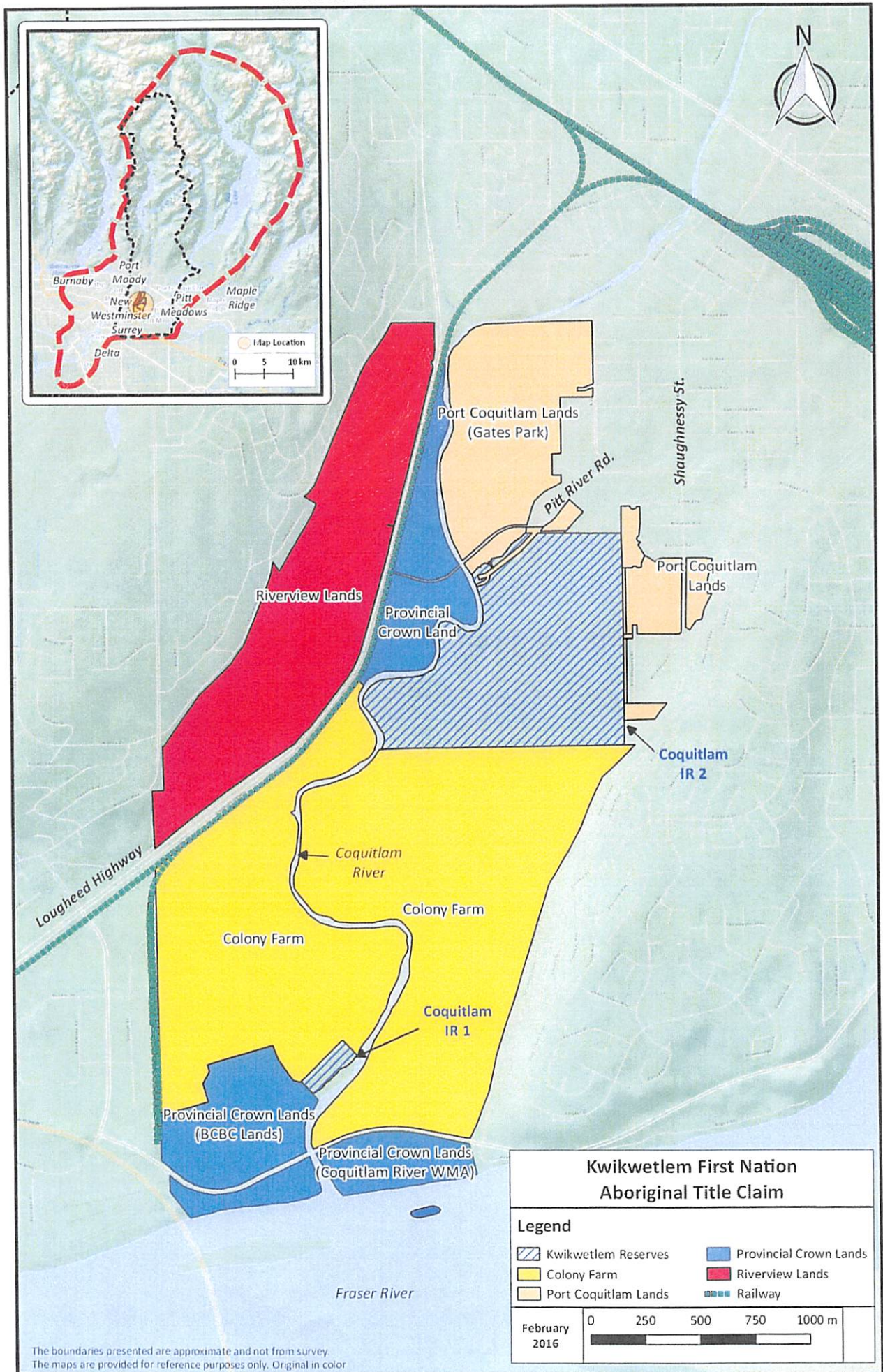
Park Dedication Bylaw, 1977, No. 1563

Public Agency Accommodation Act, SBC 2006, c 7.

United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295, (2007).

Wildlife Act, RSBC 1996, c 488.

Schedule "A" - Detailed View



Schedule "B" - Overview

