
BACKGROUND

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Ministry of Aboriginal Relations and Reconciliation
Indian and Northern Affairs Canada

THOMAS LITIGATION: PROPOSED SETTLEMENT AGREEMENT

On Aug. 24, 2001, Chief Andrew Thomas and the Councillors of Esquimalt and Chief Garry Albany and the Councillors of Songhees filed litigation against Canada and British Columbia. The litigation alleged, among other issues, that Canada and British Columbia had breached certain duties owed to the two First Nations with respect to a parcel of land defined as the “James Bay Reserve.” The claim alleged that the land was originally set aside as an Indian reserve in 1854 by Governor James Douglas, who then took it back for the legislature site without obtaining a surrender of the reserve.

As part of the litigation, the two First Nations sought:

- a declaration that the First Nations have existing Douglas treaty rights to the James Bay Reserve;
- damages for breaches of Douglas treaty rights;
- damages for breaches of fiduciary duty; and
- damages for trespass.

The proposed settlement agreement still requires ratification by the membership of the Esquimalt and Songhees First Nations and the Government of Canada. Once ratified, the proposed settlement agreement will provide for a full and final settlement of this litigation without any admissions of fact or liability. It will release Canada and British Columbia from all Esquimalt and Songhees First Nations’ claims to that parcel of land, which includes the grounds of the British Columbia legislature.

This proposed settlement agreement was concluded outside of the British Columbia treaty process, which is designed to conclude treaties with Aboriginal groups in British Columbia.

HIGHLIGHTS OF THE PROPOSED SETTLEMENT AGREEMENT

Compensation

As part of the proposed settlement agreement, Canada and B.C. have agreed to pay a financial settlement of \$31.5 million to the Esquimalt and Songhees First Nations, to be shared equally. The settlement agreement provides that a portion of the settlement monies totalling \$8.5 million (\$4.25 million for each First Nation) can be used to purchase lands totalling not more than 10 acres in size.

The Settlement Funds are not “Indian Moneys” within the meaning of the Indian Act, but rather the monies will be managed through a Trust Agreement established for each First Nation.

Replacement Lands Process

Within 60 days of the effective date of the agreement following its ratification, the parties will establish a Replacement Lands Committee, and identify representatives, as part of a process to identify Replacement Lands.

The Replacement Lands Committee will assist the First Nations in identifying lands that are suitable for residential or economic development purposes (either as reserve lands or as non-reserve fee simple lands). Canada will assist in identifying surplus federal real property for potential acquisition by the First Nations within existing policies. British Columbia will also assist in identifying surplus provincial Crown lands for potential acquisition by a First Nation within existing policies.

If suitable lands are identified, the Settlement Agreement provides that up to \$4.25 million of the settlement monies can be used by each First Nation to purchase the lands. The Agreement also allows the First Nation to seek reserve status for the lands purchased, subject to certain conditions, including a limit on the size of the combined parcels being not more than 10 acres total and any addition to reserve must satisfy Canada's Additions to Reserve Policy.

FINAL SETTLEMENT OF ACTION

Following ratification of the agreement by the two First Nations, and as a result of the compensation, the Replacement Lands process, and other terms of the agreement, the First Nations will surrender all rights and interests in the lands related to the action.

Nothing in the agreement affects the ability of the two First Nations or any of their members to be eligible to apply for, or to continue to have access to, funding for programs and services offered by Canada or British Columbia on the same basis as other bands or Indians.

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