

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

The COUNCIL OF THE HAIDA NATION and Guujaaw, suing on his own behalf and on behalf of all members of the HAIDA NATION

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

STATEMENT OF CLAIM

1. The Plaintiff, the Council of the Haida Nation, is the official governing body of the Haida Nation, pursuant to the Constitution of the Haida Nation, and is authorized to and does represent the Haida Nation.
2. The Plaintiff, Guujaaw, is the elected President of the Haida Nation and is authorized pursuant to the Constitution of the Haida Nation to bring this Action.
3. The Plaintiffs, together, represent the Haida Nation, including the Council of Hereditary Chiefs, and bring this Action on behalf of all citizens of the Haida Nation.
4. The Haida Nation are Indigenous Peoples, whose territory relative to Canada's interests is Haida Gwaii, "Islands of the People", also known as the "Queen Charlotte Islands", which includes the land, inland waters, seabed, archipelagic waters, air space, and everything contained thereon and therein comprising Haida Gwaii (hereinafter called "Haida Gwaii"). Haida Gwaii is shown on a map, which is attached as Schedule "A" to the Writ of Summons.
5. Without the consent of the Haida Nation, and contrary to the principles and accepted practices of the British Crown reflected in the *Royal Proclamation of 1763*, the British Crown claimed Title and the right to colonize Haida Gwaii.
6. The Defendants are the successors to the British Crown.

7. The Defendant, The Attorney General of Canada (“Canada”), is the representative of Her Majesty the Queen in Right of Canada, pursuant to Section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended.
8. The Defendant, Her Majesty the Queen in Right of British Columbia (the “Province”), claims unencumbered Crown Title to Haida Gwaii contrary to Section 109 of the *Constitution Act, 1867*.
9. Prior to and since 1846, Haida Gwaii was and continues to be occupied and possessed communally by the Haida Nation. Haida Gwaii is the homeland of the Haida Nation and at all material times the connection of the Haida Nation to Haida Gwaii has been of central significance to and the source of the distinctive culture of the Haida Nation.
10. Without limiting the generality of the foregoing, the Haida Nation exclusively occupied Haida Gwaii prior to and at 1846, by:
 - a) the continuance of Haida culture, which is based upon the relationship of Haida People to Haida Gwaii;
 - b) maintaining a spiritual relationship with the beings and the spirits of the earth, the forests, the sea and the sky;
 - c) living within and managing the human use of Haida Gwaii, and utilizing, conserving and protecting the terrestrial and marine ecosystems, to assure the well-being of present and future generations, in accordance with Haida customs, laws and traditions;
 - d) establishing trade relationships with other Indigenous Peoples, agents of nation states, and international trading entities; and
 - e) governing Haida Gwaii through the development and maintenance of institutions and laws related to lands and resources, including laws related to access and trespass.
11. Further, or in the alternative, in spite of the Defendants’ disregard of the prior Title of the Haida Nation, and their efforts to control the resources of Haida Gwaii, the Haida Nation has maintained a substantial connection to Haida Gwaii to the present through:
 - a) continuing the activities and practices set out at paragraphs 10 a) to c) above;

- b) the exercise of political authority in asserting ownership of Haida Gwaii in dealings with other Indigenous Nations, the Defendants, and persons authorized by the Defendants to engage in industrial and other commercial activities on Haida Gwaii; and
 - c) the maintenance and evolution of political institutions and laws, including the management of lands and the conduct of internal and external affairs.
12. The Haida Nation exercised, and to the extent possible, continues to the present to exercise the following practices, customs and traditions within Haida Gwaii, which were integral to their distinctive society prior to contact with Europeans:
- a) used, harvested, managed and conserved fish and other aquatic species from the sea and the inland waters of Haida Gwaii for cultural, domestic and livelihood purposes;
 - b) used, harvested, managed and conserved trees, including old-growth cedar from the forested areas of Haida Gwaii for cultural, domestic and livelihood purposes;
 - c) developed a culture based upon the relationship of the Haida People to the land and the spirits of Haida Gwaii;
 - d) traded outside of the Haida Nation, fish and other aquatic species harvested from Haida Gwaii, for commercial purposes;
 - e) traded outside of the Haida Nation, material goods manufactured from trees harvested from Haida Gwaii, for commercial purposes; and
 - f) managed and conserved the terrestrial and marine ecosystems, in accordance with their customs, laws and traditions.
13. The Haida Nation has resisted colonization, and has been in an ongoing dispute with the Defendants over ownership and jurisdictional matters, especially matters related to the uses of the land and sea. At the same time, the Haida Nation has been ready, willing, and able to enter into good faith negotiations to reach an agreement for co-existence with the Defendants, particulars of which include the following:
- a) the Haida Nation has formally served notice to the Defendants of the continued existence of Haida Title and Rights to Haida Gwaii, and remained open to seeking appropriate solutions which might harmonize Haida Title and Crown Title; and

- b) the Haida Nation has entered into the Comprehensive Claims Process and the British Columbia Treaty Process established by the Defendants, and other processes, with a desire to engage in honourable and effective negotiations.
14. No Treaty has ever been concluded between the Crown and the Haida Nation at all, and in particular regarding, *inter alia*, lands, waters, airspace, resources, governance, or taxation.
15. In the absence of any Treaty with the Haida Nation, and without regard to the Aboriginal Title and Rights of the Haida Nation, the Defendants have unlawfully occupied and exploited the resources of Haida Gwaii, and interfered with the Haida Nation's exercise and evolution of Haida laws, customs and traditions. In so doing, the Defendants have interfered with the culture and livelihood of the Haida Nation.
16. Without limiting the generality of the foregoing, the Province has acted beyond its constitutional powers by assuming the right of exclusive control of Haida Gwaii and issuing exclusive tenures to lands and resources of Haida Gwaii and deriving royalties (stumpage, revenue and taxes) therefrom, without regard to the Aboriginal Title and Rights of the Haida Nation.
17. The Defendants have trespassed and committed nuisance by issuing tenures which interfere with Haida occupation and enjoyment of Haida Gwaii and which have resulted in loss of biological diversity and caused degradation to terrestrial and marine ecosystems of Haida Gwaii. Without limiting the generality of the foregoing, the Defendants have:
- (a) appropriated for themselves or for their agents, land and resources of Haida Gwaii;
 - (b) granted, replaced or renewed tenures to land and resources of Haida Gwaii to third parties;
 - (c) collected royalties (stumpage, revenues and taxes) derived from the land and resources of Haida Gwaii, and prevented the Haida Nation from receiving benefits derived therefrom;
 - (d) prevented, interfered or attempted to prevent and interfere with members of the Haida Nation accessing, using, harvesting, managing, conserving or protecting Haida Gwaii;

- (e) permitted the introduction of non-indigenous species of plants and animals to Haida Gwaii; and
 - (f) failed to protect and sustainably manage the resources of Haida Gwaii, and in particular, the old-growth forests, watersheds and monumental cedar.
18. Further, and in the alternative, the Defendants have infringed the Aboriginal Title and Rights of the Haida Nation by denying that the Haida Nation holds Aboriginal Title and Rights to Haida Gwaii and by taking the following steps:
- a) issued tenures, permits and licences to third parties within Haida Gwaii or otherwise managed and allocated lands, waters and resources of Haida Gwaii, in a manner which has interfered with the exclusive use and occupation of Haida Gwaii by the Haida Nation;
 - b) conveyed land to itself and to third parties without regard to the Aboriginal Title and Rights of the Haida Nation;
 - c) refused to properly consider and accommodate Haida Aboriginal Title and Rights in decisions the Defendants have made concerning the allocation of land and resources of Haida Gwaii;
 - d) passed laws which confer discretion which is not structured to accommodate the Aboriginal Title and Rights of the Haida Nation to land and resources of Haida Gwaii;
 - e) prevented, interfered or attempted to prevent and interfere with citizens of the Haida Nation accessing, using, harvesting, managing, conserving or protecting Haida Gwaii, and from receiving benefits derived from Aboriginal Title and Rights;
 - f) collected royalties (stumpage, revenue and taxes) from Haida Gwaii; and
 - g) failed to protect and sustainably manage the resources of Haida Gwaii, and in particular, the old-growth forests, watersheds and monumental cedar.
19. Without limiting the generality of the foregoing, the Defendants have a constitutional fiduciary duty to consider Haida interests to Haida Gwaii and to consult and accommodate the Aboriginal Title and Rights of the Haida Nation prior to the issuance or renewal of tenures, permits and licences, and with respect to existing tenures, permits and licences for which no proper consultation has occurred prior to their

issuance. The Defendants have refused or have failed to conduct good faith negotiations with the Plaintiffs to reach accommodation.

20. As a result of the acts and omissions of the Defendants set out above, the Haida Nation has suffered damages and loss.

WHEREFORE THE PLAINTIFFS CLAIM as follows:

- a) A Declaration that the Haida Nation has Aboriginal Title and Rights to Haida Gwaii, within the meaning of Section 35 of the *Constitution Act, 1982*.
- b) A Declaration that Crown Title to Haida Gwaii is encumbered within the meaning of Section 109 of the *Constitution Act, 1867* by the Aboriginal Title of the Haida Nation.
- c) A Declaration that the Haida Nation is entitled to an Order for damages and compensation for the Defendants' unlawful conduct, as follows:
 - i) compensation for unlawful occupation and appropriation of Haida Gwaii, and for infringement of Aboriginal Title and Rights;
 - ii) damages in trespass for wrongful interference with Aboriginal Title; and
 - iii) damages in nuisance for unlawful interference with the Haida Nation's use and enjoyment of Haida Gwaii and damage to Haida Gwaii.
- d) An Order quantifying the damages and compensation referred to above.
- e) A Declaration that the Defendants have unlawfully collected revenues from Haida Gwaii.
- f) An accounting of all profits, taxes, stumpage dues, royalties and other benefits in connection therewith acquired by the Defendants and/or their servants, agents or contractors in respect of Haida Gwaii.

- g) An Order quashing such forestry, fisheries, mineral and other tenures, permits and licences which have been issued by the Defendants, without accommodation with the Haida Nation, particulars of which will follow.
- h) An Order of ejectment and for recovery of land from the Province for tenures issued by the Province which create ongoing damage and cannot be harmonized with Aboriginal Title of the Haida Nation, particulars of which will follow.
- i) All further and proper declarations, accounts, inquiries, orders and directions to carry out the remedies awarded.
- j) Interlocutory relief.
- k) Pre-judgment and post-judgment interest according to the *Court Order Interest Act*, and its predecessor legislation.
- l) Costs, including special costs or increased costs.
- m) Such further and other relief as this Honourable Court may deem just.

Place of Trial: Vancouver, B.C.

Dated this 14th day of November, 2002.

Louise Mandell, Q.C.

Joseph Arvay, Q.C.

Terri-Lynn Williams-Davidson

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