



Original Statement of Claim filed November 14, 2002
Amended Without Leave Pursuant to Rule 6-1 (1)(a) February 5, 2016
Further Amended Pursuant to Rule 6-1(1)(a)

Action No. L020662
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

The COUNCIL OF THE HAIDA NATION and Guujaaw Peter Lantin, suing on his own behalf and on behalf of all ~~members~~ citizens 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

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) serve 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(S)

Part 1: STATEMENT OF FACTS

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~~ Peter Lantin, 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 formerly known as the "Queen Charlotte Islands". In this claim, "Haida Gwaii", 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~~ Notice of Civil Claim.

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 asserted sovereignty over, claimed Title to, and asserted 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 thereto, ~~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 Peoples 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 Haida Gwaii 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 Haida Gwaii land, and its supernatural beings 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;
- (c) The Haida Nation entered into the Gwaii Haanas Agreement with Canada in 1993 which provided for co-management of the Haida Heritage Site and National Park Reserve covering a quarter of the land area of Haida Gwaii, including the whole of the southern area of the archipelago;
- (d) The Haida Nation entered into a Strategic Land-Use Plan Agreement with the Province in 2007, and the 2009 *Kunst'aa Guu-Kunst'aayah* Reconciliation Protocol with the Province to protect a quarter of the land area in the northern part of Haida Gwaii, including 74% of the coastline and near shore areas and to establish a protocol to move forward with joint management of the remaining landbase outside of private lands;
- (e) The Haida Nation entered into an agreement with Canada in 2010 to jointly manage the marine portion of the Gwaii Haanas area as a Haida Heritage Site and National Marine Conservation Area Reserve;
- (f) The Haida Nation entered into a memorandum of agreement with Canada in 2007 to jointly manage the *sGaan Kinghlaas* (Bowie Seamount) area as a Haida Heritage Site and marine protected area;
- (g) In summary, the Haida Nation, Canada and the Province have agreed to formal protection of a total of 52% of the land base of Haida Gwaii, or about 500,000 hectares of land and 3,464 square kilometres of marine spaces, and shared and joint management of almost the entire landbase of Haida Gwaii; and
- (h) The Haida Nation has been involved since 2009 in the negotiation of a Reconciliation Agreement with Canada and British Columbia, which includes a

Reconciliation Protocol for collaborative decision-making with Canada in
respect of Haida Gwaii.

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,~~ unjustifiably interfered with Haida Gwaii, thereby committing unlawful interference including trespass and nuisance, 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.~~

16. The Defendants have ~~trespassed and committed nuisance by issuing~~ unlawfully issued tenures, permits and licences which interfere with Haida occupation and enjoyment of Haida Gwaii, ~~and which have~~ has 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, lands and resources of Haida Gwaii;
 - (b) granted, replaced or renewed the tenures, permits and licences to the 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 citizens ~~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 terrestrial and marine ecosystems ~~the resources~~ of Haida Gwaii, and in particular, the old-growth forests, watersheds and monumental cedar and marine species.
17. 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, including ~~and~~ by taking the following steps:
- (a) ~~issuinged~~ tenures, permits and licences to third parties within Haida Gwaii or otherwise ~~managinged~~ and ~~allocatinged~~ lands, waters and the resources of Haida Gwaii, in a manner which has interfered with the exclusive use and occupation of Haida Gwaii by the Haida Nation;
 - (b) conveying land to themselves ~~itself~~ and to third parties without regard to the Aboriginal Title and Rights of the Haida Nation;
 - (c) ~~refusinged~~ 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 Haida 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 terrestrial and marine ecosystems resources of Haida Gwaii, and in particular, the old-growth forests, watersheds and monumental cedar.
18. 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, existing tenures, permits and licences for which no proper consultation has occurred prior to their issuance.~~ With respect to the matters set out in paragraphs 17 and 18 herein, The Defendants have refused or have failed to conduct good faith negotiations with the Plaintiffs to consult and reach accommodation of Haida Aboriginal Rights and Title.
19. ~~As a result of the acts and omissions of the Defendants set out above, the Haida Nation has suffered damages and loss.~~

Part 2: RELIEF SOUGHT

1. 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*.

- ~~2. — 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.~~
2. A Declaration that the Haida Nation is entitled to an Order for damages and compensation for the Defendants' unlawful conduct, as follows:
 - (a) compensation for unlawful occupation and appropriation of Haida Gwaii, and for unjustifiable infringement of Aboriginal Title and Rights;
 - (b) damages in trespass for wrongful interference with Aboriginal Title; and
 - (c) damages in nuisance for unlawful interference with the Haida Nation's use and enjoyment of Haida Gwaii and damage to Haida Gwaii.
3. An Order quantifying the damages and compensation referred to above.
4. A Declaration that the Defendants have unlawfully collected revenues from Haida Gwaii.
5. 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.
- ~~6. — 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.~~
- ~~7. — An Order of ejectment and for recovery of land from the Province for tenures issued by the Province subsequent to the date of the filing of this action which create ongoing damage and cannot be harmonized with the Aboriginal Title of the Haida Nation, particulars of which will follow.~~
- ~~6. 7. 8.~~ All further and proper declarations, accounts, inquiries, orders and directions to carry out the remedies awarded.

~~7. 8. 9.~~ Interlocutory relief.

~~8. 9. 10.~~ Pre-judgment and post-judgment interest according to the *Court Order Interest Act*, and its predecessor legislation.

~~9. 10. 11.~~ Costs, including special costs or increased costs.

~~10. 11. 12.~~ Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The Haida Nation has unextinguished Aboriginal Rights and Title to Haida Gwaii.
2. The assertion by the Crown of Title to, and the right to colonize, Haida Gwaii was contrary to the principles of law, and accepted practices of the British Crown reflected in the *Royal Proclamation of 1763*.
3. The claim to unencumbered Crown Title to Haida Gwaii by the Defendants is contrary to the fiduciary duty of the Crown to protect the unextinguished beneficial interest of the Haida Nation in Haida Gwaii, which interest represents an encumbrance on the interest of the Crown.
4. 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' occupation and exploitation of Haida Gwaii and their interference with the Haida Nation's exercise and evolution of Haida laws, customs and traditions, is unlawful.
5. 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, particulars of which are set out in paragraph 16 of the Statement of Facts above.

6. 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 acting to unjustifiably infringe that Aboriginal Title and Rights as particularized in paragraphs 16 and 17 of the Statement of Facts above.
7. The Defendants have breached their constitutional fiduciary duty to protect the Aboriginal Title and Rights of the Haida Nation to Haida Gwaii, to justify any infringements thereto, to obtain the consent of the Haida Nation to such infringements, to compensate the Haida Nation for such infringements 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 by failing to enter into good faith negotiations with the Plaintiffs to reach accommodation prior to the issuance or renewal of such tenures, permits and licences, contrary to the jurisprudence of the Supreme Court of Canada and the *United Nations Declaration on the Rights of Indigenous Peoples*.

Plaintiff's(s') address for service:

White Raven Law Corporation
16541 Upper Beach Road
Surrey, BC V6Z 9R6

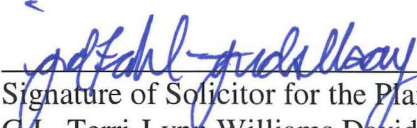
Fax number address for service (if any): 604-536-5542

E-mail address for service (if any): info@whiteravenlaw.ca; tlwd@whiteravenlaw.ca

Place of trial: Vancouver, British Columbia

The address of the registry is: Vancouver Courthouse, 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1

Dated: April 05, 2017 10


Signature of Solicitor for the Plaintiffs
C.L. Terri-Lynn Williams Davidson

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.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for Aboriginal Title and Rights to and over the Haida Territory and for damages for wrongful interference with such Title and Rights.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods and services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action

- ☐ maritime law
- ☒ aboriginal law
- ☒ constitutional law
- ☐ conflicts of law
- ☐ none of the above
- ☐ do not know

Part 4:

1. Constitution Act, 1982
2. Crown Liability and Proceedings Act, R.S.C., 1985, c. C-50
3. *Royal Proclamation of 1763*

Schedule A

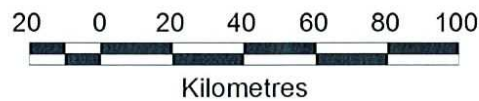
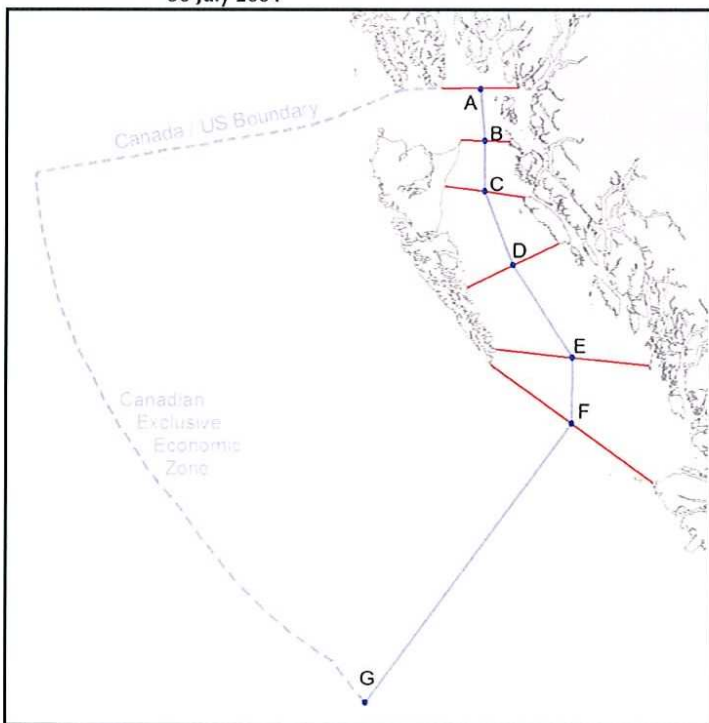
Haida Territorial Boundary relevant to Canada's interest

Coordinates in UTM Zone 9 (metres)

Label	Latitude	Longitude
A	348,813	6,063,183
B	354,075	6,005,638
C	354,213	5,949,126
D	385,477	5,866,629
E	451,544	5,764,381
F	450,879	5,690,936
G	222,511	5,380,719



COUNCIL OF THE HAIDA NATION
30 July 2004



Map Projection: UTM Zone 9