



Fifth Further Amended Notice of Civil Claim filed _____, 2024
pursuant to Rule 6-1 of the Supreme Court Civil Rules.
Fourth Further Amended filed November 10, 2023.
Third Further Amended filed May 19, 2023.
Second Further Amended filed August 23, 2022.
Further Amended filed on February 18, 2022.
Writ of Summons originally filed on 10 December 2003.

Lawyer for the Defendant and Third Party, His Majesty the King in Right of the Province of British Columbia
Keith Bergner
Michael P. Doherty

MB

Lawyer for the Defendant and Third Party, The Attorney General of Canada
Ainslie Harvey
Susan Dawson

Lawyer for the Defendant, Skii km
Lax Ha also known as Darlene Simpson
Anne Fontaine

AF

No. S036687
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MALII also known as Glen Williams, GWAAS HLAAM also known as George Philip Daniels, LUUXHON also known as Don Russell, GAMLAXYELTXW also known as Wilhelm Marsden, SINDIHL also known as Graham Morgan, WATAKHAYETSXW also known as Deborah Good, GWINUU also known as Phyllis Haizimsque, WII'LITSXW also known as Gregory Rush, HAIZIMSQUE also known as Verna Howard, on behalf of themselves and in their capacity as the GITANYOW HEREDITARY CHIEFS and on behalf of all members of the GITANYOW NATION

PLAINTIFFS

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and THE ATTORNEY GENERAL OF CANADA and SKII KM LAX HA also known as Darlene Simpson, on behalf of herself and, in her capacity as TSETSAUT / SKII KM LAX HA HEREDITARY CHIEF, on behalf of all members of the TSETSAUT / SKII KM LAX HA NATION

DEFENDANTS

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA and THE ATTORNEY GENERAL OF CANADA

THIRD PARTIES

FIFTH FOURTH FURTHER AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs 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 your 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 plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within

that time.

Claim of the Plaintiffs

Part 1: STATEMENT OF FACTS

A. The Parties

1 MALII also known as Glen Williams, GWAAS HLAAM also known as George Philip Daniels, LUUXHON also known as Don Russell, GAMLAXYELTXW also known as Wilhelm Marsden, SINDIHL also known as Graham Morgan, WATAKHAYETSXW also known as Deborah Good, GWINUU also known as Phyllis Haizimsque, WII'LITSXW also known as Gregory Rush, HAZIMSQUE also known as Verna Howard, are hereditary chiefs of the Gitanyow Nation (the "Gitanyow Hereditary Chiefs") and bring this action on their own behalf and on behalf of all the members of the Gitanyow Nation, which is comprised of the members of the eight Gitanyow Huwilp ("the Gitanyow" or "the Plaintiffs").

2 The Gitanyow are an aboriginal people within the meaning of section 35(1) of the *Constitution Act*, 1982. The Gitanyow Hereditary Chiefs represent the Gitanyow Nation as stated in the preamble and in sections 3.0(3) and (6) of the *Constitution of the Gitanyow Nation*:

The Gitanyow peoples are known collectively as the Gitanyow Nation. The Gitanyow Nation comprises two pdeek, the Lax Gibuu and the Lax Ganeda, organized into eight Wilp. These are the Wilp Lax Gibuu of Gwass Hlaam, Wii"litsxw, Malii, and Haizimsque and the Wilp Lax Ganeda of Gamlaxyeltxw, Gwinuu, Luuxhon and Watakhayetsxw.

The Simgigyet'm Gitanyow ("Gitanyow Hereditary Chiefs") are the leaders of the Gitanyow. The Simgigyet names confer responsibility and authority for their respective Wilp, Members and Lax' yip.

For the purposes of working together for peace, order and good government, the individual Gitanyow Wilp will address common, regional, national and international issues collectively through the Simgigyet'm Gitanyow.

3 The Defendants are the successors to the British Crown.

4 The Defendant, The Attorney General of Canada ("Canada"), is the representative of His

Majesty the King 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.

5 The Defendant, His Majesty the King in Right of British Columbia is the Provincial Crown (the “Province”) and claims unencumbered Crown Title to Gitanyow territory contrary to section 109 of the *Constitution Act, 1867* and section 35 of the *Constitution Act, 1982*.

B. Gitanyow Aboriginal Title Over the Gitanyow Lax’yip

6 The Gitanyow territory includes approximately 6,200 square kilometres of the mid-Nass River and Kitwanga River watersheds in northwestern British Columbia. This territory is known as the Gitanyow Lax’yip and includes the lands, minerals, inland waters and the lands thereunder, airspace and all resources thereof including, for greater certainty, subterranean resources (the “Gitanyow Lax’yip”). The Gitanyow Lax’yip is shown on the map appended as Schedule “A”.

7 The Gitanyow have existing aboriginal title to the Gitanyow Lax’yip. The relationship between the Gitanyow and the Gitanyow Lax’yip is governed by Gitanyow Ayookxw (law). Gitanyow Ayookxw regulates the affairs of the Gitanyow, and is part of a body of Indigenous law governing the establishment, recognition, and transfer of territorial claims, and the resolution of territorial disputes between the Gitanyow and neighbouring peoples.

8 Since time immemorial, and continuing to present day, the Gitanyow have constituted an organized society sharing a common territory, language, laws, religion, culture, economy and authority. The Gitanyow have never been conquered, and have never surrendered their aboriginal title, ceded their territories to the Crown, or acquiesced in the ~~assertion~~ establishment of British sovereignty over the territory. Their aboriginal title to and authority over the Gitanyow Lax’yip has not been extinguished.

9 The Gitanyow are organized by a clan and house (Wilp) system which is the foundation of Gitanyow Ayookxw and social organization. The Gitanyow clan and house system is the social and organizational structure by which the Gitanyow exclusively occupy, own, possess and exercise authority over the Gitanyow Lax’yip.

10 The Gitanyow are divided into two Pdeek' (clans): Lax Gibuu (wolf) and Lax Ganeda (frog). These clans are further organized into eight ~~Wilp~~ Huwilp, or house groups, which have one or more territories which together comprise the Gitanyow Lax'yip. Each Wilp has a House Chief or Simogyet who has rights and responsibilities specific to their Wilp territories.

11 The power and authority of a Wilp and its Simogyet over the Wilp territory arises from the Daxgyet, the fundamental relationship between the Wilp and the land. The Chief's authority and Wilp's wellbeing depend on the ability to preserve the strength of the Daxgyet, which requires the Simogyet to both discharge obligations towards the land and ensure that the Wilp can benefit from the land itself.

12 Gitanyow exclusive use and occupation of the Gitanyow Lax'yip through maintaining the Daxgyet of the Chiefs is described in and given effect by their Adawaak (oral histories), Limx'oy (songs), Ayuuks (crests), and on their Git'mgan (totem poles). In Gitanyow Ayookxw, these instruments constitute proof of Gitanyow ownership and sovereignty over the Gitanyow Lax'yip.

13 There are 14 Wilp territories which together comprise the Gitanyow Lax'yip. ~~The title to each territory is held by a Wilp~~ Each Wilp holds Daxgyet with respect to, exercises authority over and has responsibility for its own Wilp territory, pursuant to Gitanyow law. Between them, the plaintiffs represent all of the Huwilp that together hold ~~title to~~ the entirety of the Lax'yip. Most of the territories have been held in full since time immemorial. Some territory was obtained from other Indigenous groups more recently according to Gitanyow law and the Indigenous laws that governed the interaction of the Gitanyow with their neighbours. All of the territories were held by the Gitanyow no later than 1861.

14 The Gitanyow and their ancestors exclusively used, occupied, and exercised authority over the Gitanyow Lax'yip and people, including through the maintenance and enforcement of the Gitanyow Daxgyet and Ayookxw. Without limiting the generality of the foregoing, particulars of this use and occupation include activities, authority, and laws in relation to:

- a. Gitanyow social organization, which is based upon on the clan and house system and the relationship of the Gitanyow to the Gitanyow Lax'yip;
- b. Gitanyow political, legal, social and cultural institutions and the exercise of Gitanyow authority over the Gitanyow Lax'yip through those institutions;
- c. the Gitanyow feast system ("Li'ligit"), which affirms the Daxgyet and Ayookxw;
- d. Gitanyow spiritual beliefs and practices within the Gitanyow Lax'yip, which maintain their spiritual relationships with the beings and the spirits of the Lax'yip, the forests, the waters and the sky;
- e. trade relationships and practices with other Indigenous and non Indigenous peoples;
- f. the protection and maintenance of the boundaries of the Gitanyow Lax'yip, including laws in relation to access to resources and trespass;
- g. the expression and confirmation of Gitanyow ownership of the Gitanyow Lax'yip through their Li'ligit, regalia, Adawaak, Limx'oy, Ayuuks, and Git'mgan;
- h. the management, utilization, conservation and protection of the land and resources within the Gitanyow Lax'yip to assure the well-being of present and future generations, including:
 - i. terrestrial and inland waters and riverine ecosystems;
 - ii. fish and other aquatic species from the sea and the inland waters;
 - iii. trees, including old-growth cedar;
 - iv. fauna; and
 - v. berries, plants and medicines.

15 Further, in spite of the Defendants' disregard of the pre-existing aboriginal title of the Gitanyow, and their efforts to control the resources of Gitanyow Lax'yip, the Gitanyow have maintained their aboriginal rights and title to the Gitanyow Lax'yip to the present through:

- a. continuing the activities and practices set out at paragraph ~~15~~ 14 above;
- b. asserting ownership and control of the Gitanyow Lax'yip in dealings with other Indigenous Nations, the Defendants, and other persons, including but not limited to those authorized by the Defendants to engage in industrial and other commercial activities within the Gitanyow Lax'yip;
- c. the maintenance and evolution of political institutions and laws, including the management of lands and the conduct of internal and external affairs; and
- d. protecting and maintaining the boundaries of the Gitanyow Lax'yip since pre-contact and up to the present day by enforcing Gitanyow Ayookxw.

16 The Gitanyow have defended their Lax'yip against colonization, and have resisted the Defendants' assertions of ownership and jurisdiction, including matters related to the use of land and water resources within the Gitanyow Lax'yip. However, the Gitanyow have remained 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 Gitanyow have repeatedly given notice to the Defendants since the late 1800s of the continued existence of Gitanyow aboriginal rights and title to the Gitanyow Lax'yip, and have remained open to seeking appropriate solutions for reconciliation;
- b. the Gitanyow have entered into the Comprehensive Claims Process and the British Columbia Treaty Process established by the Defendants; and
- c. the Gitanyow have endeavoured to negotiate agreements with the Provincial Crown regarding the management and protection of the Gitanyow Lax'yip.

17 The Gitanyow never ceased to assert their aboriginal title, right of possession, and authority over the Gitanyow Lax'yip in accordance with Gitanyow Ayookxw and practices.

C. Wrongful Conduct of the Defendants

18 In 1863, Britain extended the border of the Colony of British Columbia to the 60th parallel, thereby encompassing the Lax'yip within colonial boundaries for the first time. Until 1889, there was little or no administrative presence by the Crown on the Lax'yip. In 1903, the border between Alaska and British Columbia was finally determined pursuant to an international arbitration. In 1927, the Crown sought to assert control over the Gitanyow by jailing several of their leaders and subsequently imposing an Indian Reserve within the Gitanyow Lax'yip.

19 Since that time, in the absence of any treaty with the Gitanyow, and without regard to the aboriginal title and rights of the Gitanyow, the Defendants have unlawfully exploited the resources of Gitanyow Lax'yip, and substantially and unreasonably interfered with the Gitanyow's exercise and enjoyment of their rights.

20 Without limiting the generality of the foregoing, the Defendants have unlawfully alienated lands and authorized activities in the Gitanyow Lax'yip by issuing licences, leases, permits, and other tenures (collectively referred to as "Tenures") and deriving revenue, including royalties, stumpage, and taxes ("Benefits") therefrom, without the consent of the Gitanyow, contrary to the principles, accepted practices of the British Crown and the law reflected in the *Royal Proclamation of 1763*, and subsequently re-affirmed in sections 91(24) and 109 of the *Constitution Act, 1867*, the *Terms of Union, 1871* and section 35 of the *Constitution Act, 1982*.

21 The effect of the said wrongful conduct by the Defendants has been the unlawful appropriation and use of the Gitanyow Lax'yip by the Defendants, or other persons relying on the Defendants' unlawful exercise of jurisdiction over the Gitanyow Lax'yip, without the consent of the Plaintiffs or their ancestors. As a result of the Defendants' wrongful alienation to third parties of some Gitanyow interests in the Gitanyow Lax'yip, the Plaintiffs have been denied the ability to fully exercise and enjoy their rights under section 35 of the *Constitution Act, 1982*, including their aboriginal title over, and their right to access and use, the Gitanyow Lax'yip, and their right to exercise jurisdiction over the Gitanyow Lax'yip.

22 The Defendants have trespassed and committed nuisance by issuing Tenures which substantially and unreasonably interfere with Gitanyow occupation and enjoyment of the

Gitanyow Lax'yip and by mismanaging or allowing the resources within the Gitanyow Lax'yip to be mismanaged and depleted causing damage to the Gitanyow.

23 Further, the Defendants have denied the existence of the Gitanyow's aboriginal rights including aboriginal title and have infringed those rights in that the Defendants or either of them:

- a. issued, replaced and renewed Tenures to third parties or otherwise managed and allocated lands, waters and resources, in a manner which has interfered with the exclusive use and occupation of the Gitanyow Lax'yip by the Gitanyow;
- b. conveyed land to themselves and to third parties without regard to the aboriginal title and rights of the Gitanyow;
- c. failed to properly consider and accommodate Gitanyow title and rights in decisions they have made concerning the allocation of land and resources of the Gitanyow Lax'yip, including opening up the Gitanyow Lax'yip for exploitation through the creation of a forestry road and developing that road into a major highway bisecting the Gitanyow Lax'yip;
- d. passed laws which purport to enable or authorize the Defendants to alienate lands and resources to third parties or to use those resources for the Defendants' own use and benefit thereby infringing the aboriginal title and rights of the Gitanyow to lands and resources of the Gitanyow Lax'yip;
- e. prevented, interfered or attempted to prevent and interfere with Gitanyow access, use, harvesting, management, conservation or protection of the Gitanyow Lax'yip, and receiving benefits therefrom;
- f. collected Benefits derived from the land and resources of the Gitanyow Lax'yip, and denied the Gitanyow the right to receive benefits therefrom; and
- g. failed to protect and sustainably manage the resources of the Gitanyow Lax'yip.

24 The Defendants' unlawful conduct constitutes breach of trust and breach of the fiduciary

duty owed to the Plaintiffs.

25 As a result of the Defendants' unlawful conduct described above, the Plaintiffs have suffered loss and damages, including but not limited to:

- b. cultural and social losses;
- c. loss of use and enjoyment of the Gitanyow Lax'yip;
- d. loss of revenue and economic benefit and opportunity from the Gitanyow Lax'yip; and
- e. environmental damages including loss of biological diversity and degradation of terrestrial, freshwater and riverine ecosystems of the Gitanyow Lax'yip.

26 The Plaintiffs have further suffered damages as a result of the wrongful alienation of Tenures to third parties and the wrongful utilization of the Gitanyow Lax'yip by the Defendants and those to whom they granted Tenures without the consent of the Gitanyow.

Part 2: RELIEF SOUGHT

~~2-7~~ A declaration that the Plaintiffs, as representatives of the Huwilp, between them hold Aboriginal title to the entirety of the Gitanyow Lax'yip and other Aboriginal rights within the meaning of section 35 of the *Constitution Act, 1982*.

~~27~~ A declaration that the Gitanyow Nation, as represented by the Gitanyow Hereditary Chiefs, holds Aboriginal title to the entirety of the Gitanyow Lax'yip within the meaning of section 35 of the *Constitution Act, 1982*.

~~2-8~~ A declaration that the Plaintiffs' aboriginal title and rights within and in relation to the Gitanyow Lax'yip include the right to manage, conserve, use, harvest from, and benefit from the lands and natural resources including but not limited to wildlife and aquatic life, and make decisions in relation thereto.

~~2-8~~ ~~2-9~~ A declaration that the Plaintiffs' aboriginal title and rights includes the right to govern the Gitanyow Lax'yip for themselves and the members of the Houses represented by the Plaintiffs

in accordance with Gitanyow Ayookxw, as they exist and develop, administered through Gitanyow political, legal and social institutions, as they exist and develop.

~~30 A declaration that the Plaintiffs' aboriginal title constitutes a burden on Crown title within the meaning of section 109 of the *Constitution Act, 1867*.~~

~~30 34~~ A declaration that the Defendants, or either of them, have unlawfully and unjustifiably infringed upon the Plaintiffs' aboriginal ~~rights and~~ title.

~~31 32~~ A declaration that the Plaintiffs are entitled to a remedy for the breaches of their aboriginal title ~~and rights~~ by the Defendants or either of them.

32. A declaration that the Gitanyow Nation, as represented by the Gitanyow Hereditary Chiefs, holds Aboriginal rights in the Gitanyow Lax'yip within the meaning of section 35 of the *Constitution Act, 1982*.

33 A declaration that the Plaintiffs' aboriginal rights within and in relation to the Gitanyow Lax'yip include the right to manage, conserve, use, harvest from, and benefit from the lands and natural resources including but not limited to wildlife and aquatic life, and make decisions in relation thereto.

34 A declaration that the Plaintiffs' aboriginal rights include the right to govern the Gitanyow Lax'yip for themselves and the members of the Houses represented by the Plaintiffs in accordance with Gitanyow Ayookxw, as they exist and develop, administered through Gitanyow political, legal and social institutions, as they exist and develop.

35 A declaration that the Defendants, or either of them, have unlawfully and unjustifiably infringed upon the Plaintiffs' aboriginal rights.

36 A declaration that the Plaintiffs are entitled to a remedy for the breaches of their aboriginal rights by the Defendants or either of them.

37 33 General damages, and/or compensation, for one or both of the Defendants' unlawful conduct for:

- a. unlawful appropriation of some of the Gitanyow Lax'yip;
- b. infringement of the Plaintiffs' aboriginal title and rights;
- c. trespass;
- d. wrongful interference with the Plaintiffs' aboriginal title and rights;
- e. nuisance; and
- f. breach of fiduciary duty with respect to the Plaintiffs' aboriginal title.

38 ~~34~~ Further, or in the alternative:

- g. a declaration that the Defendants hold the Benefits received by them and/or their servants or agents in respect of the Gitanyow Lax'yip, as a trustee for the Plaintiffs;
- h. a declaration that the Defendant Province's ownership of lands, mines, minerals and royalties within the Gitanyow Lax'yip is subject to Section 109 of the *Constitution Act, 1867*;
- i. an order for an accounting; and
- j. an order that the Defendants disgorge to the Plaintiffs the Benefits received by them in relation to the Gitanyow Lax'yip.

39 ~~35~~ An Order for aggravated and punitive damages.

40 ~~36~~ Pre-judgment and post-judgment interest according to the *Court Order Interest Act*, and its predecessor legislation.

41 ~~37~~ The costs of this action.

42 ~~38~~ Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

43 ~~39~~ The Gitanyow's relationship with the Lax'yip through the Daxgyet, the Ayookxw and the

activities which took place on the lands constitutes exclusive use and occupation giving rise to Aboriginal title.

44 ~~40~~ At the time of the ~~assertion~~ establishment of British sovereignty, the Gitanyow held Aboriginal title to the entire Gitanyow Lax'yip. The ~~assertion~~ establishment of British sovereignty over the Gitanyow Lax'yip occurred no earlier than 1863 when the *British Columbia Boundaries Act*, 26 & 27 Vict. extended the boundary of the colony to the 60th parallel. Prior to 1889, there was little or no administrative presence by the Crown on the Lax'yip. In 1903, the border between Alaska and British Columbia was finally determined pursuant to an international arbitration. As a result, the date of the ~~assertion~~ establishment of British sovereignty is between 1863 and 1903, and the Gitanyow held Aboriginal title to the Lax'yip at all of the possibly relevant dates.

45 ~~41~~ In the alternative, if this Court finds that the date of the ~~assertion~~ establishment of British sovereignty is 1846 or any other time prior to 1861, the Gitanyow held title to the majority of the territories that comprise the Lax'yip as of that date, and subsequently acquired title to the remaining territory pursuant to Indigenous law. As a result, they hold Aboriginal title to the whole of the Lax'yip.

46 ~~42~~ The Gitanyow continue to hold Aboriginal title to the entire Gitanyow Lax'yip. No treaty has ever been concluded between the Crown and the Gitanyow.

47 ~~43~~ The aboriginal title of the Plaintiffs has not been extinguished. No part of the Gitanyow Lax'yip was ever surrendered or ceded by the Gitanyow to the Crown at any time.

48 ~~44~~ The Gitanyow had and continue to have the right to enforce their Aboriginal title as against other aboriginal and non-aboriginal peoples.

49 ~~45~~ The Gitanyow hold [̄] aboriginal rights within and in relation to the Gitanyow Lax'yip, including:

-
- a. the right to manage, hunt and trap the animals thereon for food, social and ceremonial purposes and to trade in the meat, furs and by-products on a commercial basis;
- b. the right to manage and catch fish for food, social and ceremonial purposes and to

- trade in the fish and by-products on a commercial basis;
- c. the right to harvest timber for social and ceremonial purposes and to trade timber and timber by-products on a commercial basis;
 - d. the right to harvest and cultivate plants for food, social, ceremonial and medicinal purposes and to trade plants and plant by-products on a commercial basis;
 - e. the right to manage the land and the resources thereon in accordance with Gitanyow law;
 - f. the right to govern themselves in accordance with Gitanyow laws; and
 - g. the right to carry out their cultural, social and spiritual practices.

50 46 The Gitanyow have enjoyed and still enjoy their aboriginal rights and title as recognized and confirmed by the Royal Proclamation made by His Majesty King George the Third on the 7th of October, 1763 (thereinafter called the “Royal Proclamation”).

51 47 Further, the *Constitution Act, 1867*, established and confirmed *inter alia* the following constitutional rights and protections for the Gitanyow:

- a. Section 91(24) of the said *Act* granted Canada the exclusive right to obtain the surrender of the Plaintiffs’ rights in respect of Gitanyow Lax’yip in compliance with the Royal Proclamation of 1763. The reference to “lands reserved for Indians” in section 91(24) includes the Gitanyow Lax’yip.
- b. By section 109 of the said *Act*, any rights of the Defendants in relation to the lands, mines, minerals and royalties in the Gitanyow Lax’yip are subject to the Plaintiffs’ aboriginal title thereto.

52 48 In addition to the confirmation of rights and protections aforesaid, the Terms of Union of British Columbia, 1871 confirmed that the Defendants would pursue a liberal policy towards the Gitanyow and their ancestors, such liberal policy including the Imperial policy recognized and confirmed in the Royal Proclamation of 1763.

53 49 In addition to the confirmation of rights and protections aforesaid, the Gitanyow rely on the *Constitution Act, 1982*, sections 25, 35, 37 and 52 and plead that section 35 thereof protects their aboriginal rights including aboriginal title over the Gitanyow Lax’yip and those rights are

paramount to enactments past and present of the Province of British Columbia and Canada.

54 ~~50~~ The Defendants' unlawful conduct constitutes, trespass, nuisance, breach of trust and breach of the fiduciary duty owed to the Plaintiffs and unjustifiably infringes the aboriginal rights and title of the Plaintiffs.

55 ~~51~~ The Defendants received Benefits thereby enriching themselves and causing the Plaintiffs to be deprived thereof without juristic reason.

56 ~~52~~ The granting of the Tenures and the other actions of the Defendants constitute trespass and nuisance and infringe the aboriginal title and rights of the Gitanyow in that those grants:

- a. deprive the Gitanyow of the benefits, including the economic benefit of Gitanyow Lax'yip;
- b. limit the opportunities of the Gitanyow to exercise and enjoy their aboriginal title and their aboriginal rights; and
- c. have a significant adverse impact on the aboriginal title and the aboriginal rights of the Gitanyow.

57 ~~53~~ These unjustifiable infringements of Plaintiffs' aboriginal title and aboriginal rights are of no force and effect by operation of section 91(24) and section 109 of the *Constitution Act, 1867* and section 35(1) and section 52 of the *Constitution Act, 1982*.

58 ~~54~~ The Defendants are therefore liable for the breach of the aboriginal title and the aboriginal rights of the Gitanyow, the damages caused and the benefits appropriated.

59 ~~55~~ The Defendants have received significant economic benefit in the form of monies received through Crown grants, taxes, royalties and other revenues arising from the granting of Tenures and other licenses and permits and should be required to provide an accounting for same and to pay damages for depriving the Gitanyow of such economic benefits, with interest.

60 ~~56~~ Customary and conventional international law including the United Nations Declaration of the Rights of Indigenous Peoples ("UNDRIP") requires the Defendants to recognize and confirm the Plaintiffs' right to aboriginal title over the Gitanyow Lax'yip and the right not to be deprived thereof except with their consent. Canada and British Columbia have incorporated

UNDRIP as part of the law of Canada and the law of British Columbia respectively pursuant to legislation and the Defendants are bound by the terms of UNDRIP and by the terms of their legislation recognizing UNDRIP as part of the law of Canada.

~~61~~ ~~57~~ UNDRIP is a statement of customary and conventional International law as it has been recognized at the time of the approval of UNDRIP.

~~62~~ ~~58~~ The Plaintiffs, as a distinct people, have the right of self-determination within the Gitanyow Lax'yip in accordance with international law, including UNDRIP.

~~63~~ ~~59~~ The laws of the Province of British Columbia are subject to the reservation of aboriginal title by the Gitanyow.

Plaintiffs' address for service:

Peter Grant Law
729 Reed Road
Gibsons, B.C.
V0N 1V7

~~Arvay Finlay LLP~~
~~1512 — 808 Nelson Street~~
~~Box 12149, Nelson Square~~
~~Vancouver BC V6Z 2H2~~

E-mail address for service (if any): munderhill@arvayfinlay.ca
pgrant@grantnativelaw.com

Place of trial: Vancouver, British Columbia

The address of the registry is: The Law Courts, 800 Smithe Street, Vancouver, BC, V6Z 2E1

Date: ~~Nov. 10, 2023~~ October _____, 2024



Signature of
 plaintiff lawyers for
plaintiffs **Peter R. Grant** K.C.,
Diane Soroka, John K.
Phillips, K.C. ~~Catherine Boies-~~
~~Parker, K.C.~~ ~~Mark G.~~
~~Underhill, K.C.~~, and
~~Julia Riddle~~

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

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 or 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

conflict of laws

none of the above

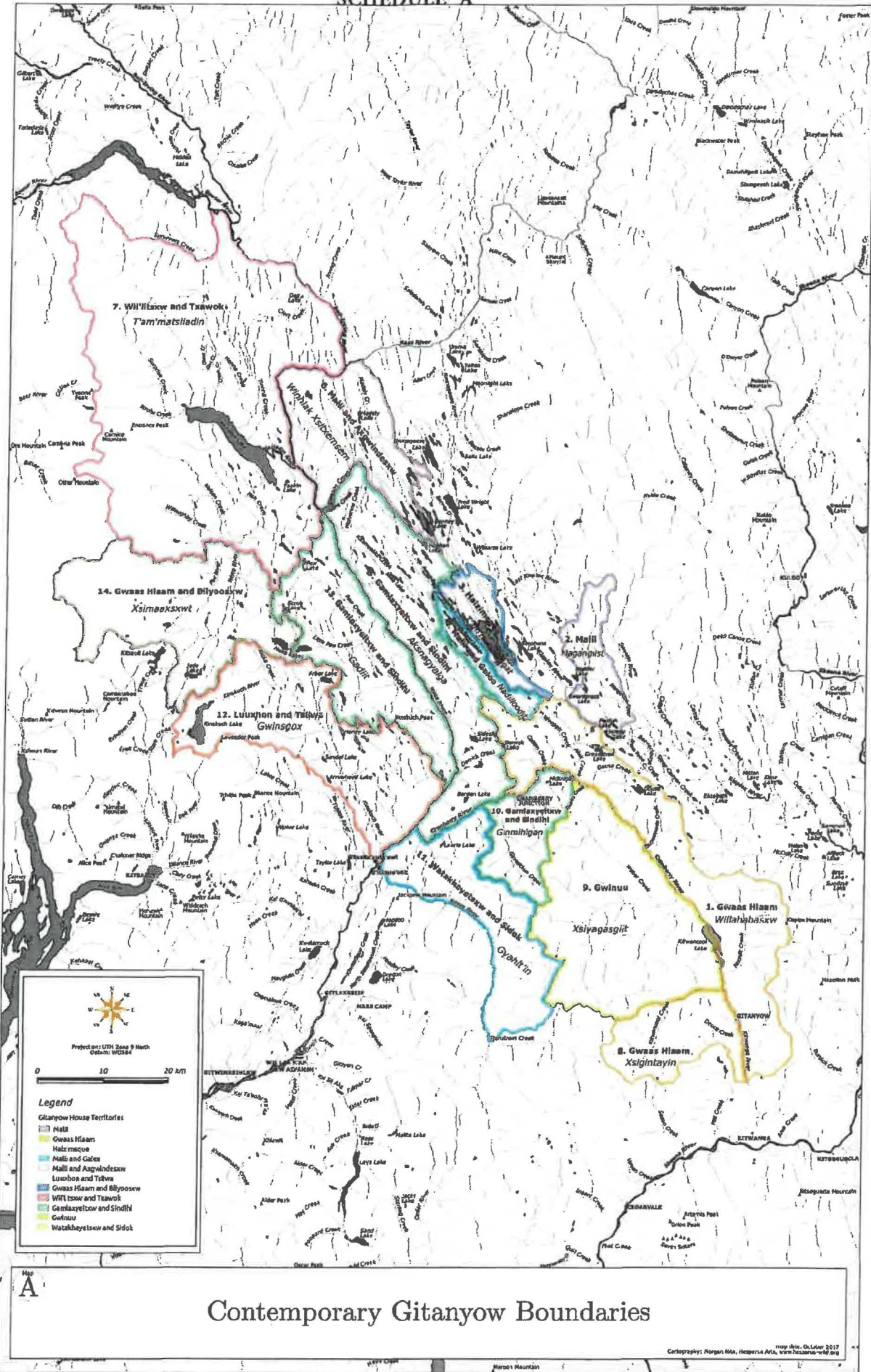
do not know

Part 4:

The Plaintiffs rely on the following enactments:

- a. the *Crown Proceedings Act*, R.S.B.C. 1979, c. 88 and amendments thereto
- b. the *Colonial Laws Validity Act*, 1865, 28-29 Victoria (p. 63).
- c. the United Nations Declaration of the Rights of Indigenous Peoples, articles 3-5, 7, 8, 10, 12, 18, 19, 20, 25-30, 32 and 34
- d. the *Constitution Act, 1982*, R.S.C. 1985, App II, No. 44 as amended;
- e. the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 as amended;
- f. the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c. 44
- g. the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14
- h. the *Indian Act*, R.S.C. 1985, c. I-5;
- i. the *Court Order Interest Act*, R.S.B.C. 1996, c. 79
- j. the *Law and Equity Act*, R.S.B.C. 1996, C. 253
- k. *British Columbia Boundaries Act, 26 & 27 Vict.*

SCHEDULE "A"



Contemporary Gitanyow Boundaries

Map No. 02/2017
Cartography: Morgan Hill, Heppner Asia, www.heppner.com

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MALII also known as Glen Williams, GWAAS HLAAM also known as George Philip Daniels, LUUXHON also known as Don Russell, GAMLAXYELTXW also known as Wilhelm Marsden, SINDIHL also known as Graham Morgan, WATAKHAYETSXW also known as Deborah Good, GWINUU also known as Phyllis Haizimsque, WII'LITSXW also known as Gregory Rush, HAIZIMSQUE also known as Verna Howard, on behalf of themselves and in their capacity as the GITANYOW HEREDITARY CHIEFS and on behalf of all members of the GITANYOW NATION

PLAINTIFFS

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, THE ATTORNEY GENERAL OF CANADA and SKII KM LAX HA also known as Darlene Simpson, on behalf of herself and, in her capacity as TSETSAUT / SKII KM LAX HA HEREDITARY CHIEF, on behalf of all members of the TSETSAUT / SKII KM LAX HA NATION

DEFENDANTS

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and THE ATTORNEY GENERAL OF CANADA

THIRD PARTIES

FIFTH FURTHER AMENDED NOTICE OF CIVIL CLAIM

Peter R. Grant, K.C.
PETER GRANT LAW
729 Reed Road
Gibsons, BC
V0N 1V7
Phone: 604-886-4846
Email: pgrant@grantnativelaw.com