



S105028

NO.
VANCOUVER REGISTRY

THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Chief Cliff Kwarkwanthea Calliou, Kelly Lake Cree Nation, and Marlene Hall, representative of the Belcourt Family, Jeanette Calliou, representative of the Calliou Family, Linda Laufman, representative of the Campbell Family, Dean Gladue, representative of the Desjarlais Family, Lawrence Gauthier, representative of the Gauthier Family, Margaret Gladue, representative of the Gladue Family, Faron Hambler, representative of the Hambler Family, Alvina Benn, representative of the Letendre Family, Anthony Savard, representative of the Savard Family, and Anne Common, representative of the Knott Family

PLAINTIFFS

AND:

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Her Majesty the Queen in Right of the Province of British Columbia, as
Represented by the Attorney General of British Columbia

DEFENDANT

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 plaintiffs.

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 plaintiffs 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 plaintiffs,

- (c) 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,
- (d) 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,
- (e) 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
- (f) 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

1. The Plaintiffs, Chief Cliff Kwarakwenthea Calliou, Kelly Lake Cree Nation, otherwise known as the As'in'I'wa'chi Ni'yaw Nation and Headman Council: Marlene Hall, representative of the Belcourt Family, Jeanette Calliou, representative of the Calliou Family, Linda Laufman, representative of the Campbell Family, Dean Gladue, representative of the Desjarlais Family, Lawrence Gauthier, representative of the Gauthier Family, Margaret Gladue, representative of the Gladue Family, Faron Hambler, representative of the Hambler Family, Alvina Benn, representative of the Letendre Family, Anthony Savard, representative of the Savard Family, and Anne Common, representative of the Knott Family are residents of Kelly Lake, British Columbia. They sue herein in their personal capacity and as representative Plaintiffs on behalf of the citizens of the Kelly Lake Cree Nation traditional lands. They are aboriginal persons within the meaning of s. 35 of the *Constitution Act, 1982*, and direct descendants of Indians of the Beaver, Cree and Iroquois Tribes who define themselves as *Deneza*, meaning "real people" in literal translation, and including all of the persons with who a kinship connection is established.

2. Each of the representatives is the traditional elected representative of their Family Group and represents residents of the traditional lands of Kelly Lake Cree Nation and their families all of whom are Plaintiffs who have the same interest in these proceedings and who have never been registered under the *Indian Act*, although they are Indians within the meaning of subsection 91(24) of the *Constitution Act, 1867*, the *Rupert's Land and North-Western Territory Order* of June 23, 1870 [hereinafter the *Constitution Act, 1870*], the *Constitution Act, 1871*, the *Constitution Act, 1930*, and the *Constitution Act, 1982*, and are all Aboriginal Peoples within the meaning of section 35 of the *Constitution Act, 1982*.
3. The Plaintiffs are a nation and community of aboriginals, who live and whose ancestors have lived or who have exercised dominion and control of the Traditional Lands (hereinafter described) at or near the Indian settlement of Kelly Lake since approximately 1795, and prior to the sovereign control of the British Columbia Crown and its predecessors.
4. The Defendant, Her Majesty the Queen in Right of British Columbia [hereinafter "B.C."] as represented by the Attorney General of British Columbia, has, at all times relevant to these proceedings, trust-like, fiduciary and equitable obligations in favour of the Plaintiffs to, with Her Majesty the Queen in Right of Canada, protect and guard the constitutionally entrenched aboriginal title and aboriginal rights and interests of the Plaintiffs. B.C. has failed to protect the constitutionally recognized aboriginal title and aboriginal rights of the Plaintiffs at all times relevant to these proceedings.
5. The lands material to the issues in these proceedings are held by the Defendant, Her Majesty the Queen in Right of the Province of British Columbia pursuant to s. 109 of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 as amended, subject to the interests of the Kelly Lake Cree Nation, being interests other than that of the Province in these lands.

The Claim Area and Aboriginal Title

6. The Plaintiffs and their ancestors have continuously used, occupied, possessed, cared for and had dominion and aboriginal title to their Traditional Lands, (as claimed in Federal

Court Action T-1685-96) within the boundaries of the Province of British Columbia, bounded on the north by the Peace River, on the west in British Columbia by the Rocky Mountains, on the south by the boundary between Treaty No. 6 of 1876 and Treaty No. 8, and on the east in Alberta by the sixth meridian. The Plaintiffs claim in this Action, for those lands within the boundaries of the Province of British Columbia [hereinafter called the "Traditional Lands" in this Action].

7. The boundaries of the Province of British Columbia prior to 1876 did not include the Traditional Lands until those boundaries were expanded into the Peace River Block.
8. The Plaintiffs and their ancestors were and have continuously lived on and exerted authority over their Traditional Lands. The Plaintiffs and their ancestors have continuously used, occupied, possessed, cared for and had dominion and aboriginal title to their Traditional Lands, since at least 1795, in order to sustain all aspects of their traditional and necessary way of life, culture, sacred and ceremonies, hunting, trapping, fishing, harvesting and using the vegetation as medicines and food and for all other cultural and community rites, as tools and utensils and have obtained their traditions, culture, livelihood and subsistence from the Traditional Lands since the Plaintiffs' commencement of the use of their Traditional Lands.
9. In the years since at least 1795, the Cree, Iroquois and Beaver Indian ancestors of the Plaintiffs have utilized and occupied the Traditional Lands and in or before 1824 had established a community now known as Kelly Lake, within the boundaries of the present Province of British Columbia.
10. The Defendant, Her Majesty the Queen in Right of British Columbia (hereinafter referred to as "B.C.") did not exercise any control over the Traditional Lands or the Plaintiffs use of their Traditional Lands until approximately 1975, and then only to a very limited extent.

Infringement of Aboriginal Title and Aboriginal Rights

11. B.C. has exceeded its constitutional jurisdiction, and has exercised its jurisdiction, in an manner that infringes the aboriginal title and aboriginal rights of the Plaintiffs. B.C. is bound by the trust and interest of the Plaintiffs under the *British Columbia Terms of Union 1871*, Schedule, section 10 applying section 109 of the *Constitution Act, 1867* and has failed to carry out section 13 of the *Terms of Union*, causing continuing breach of the aboriginal rights and titles of the Plaintiffs.
12. B.C. has failed to deal with the Traditional Lands, has failed to recognize the rights and title of the Plaintiffs including their right to self-determination, and has failed to consult with the Plaintiffs and to accommodate their use of their Traditional lands. B.C. has engaged and continues to engage in strategic planning decisions, without fulfilling its duty to consult with the plaintiffs including failing to consult on the use, management and control of natural resources, failing to respect their sacred sites, destroying their archaeological sites, and destroying their way of life.
13. B.C. is under a duty, *inter alia*, recognized by s. 109 of the *Constitution Act, 1867*, to protect the Plaintiffs in its use and enjoyment of its aboriginal title lands. B.C. had and has a constitutional, equitable, common law, trust-like and fiduciary duty to the Plaintiffs in its dealings with the Traditional Lands.
14. At all material times, B.C. has and continues to, discriminated against the Plaintiffs by deliberately not recognizing the existence of the Plaintiffs as aboriginals within the Province of British Columbia.
15. Further, B.C. set up organizations to deal with aboriginal people, including but not limited to, the Oil and Gas Commission and the B.C. Trilateral Treaty Commission, which organizations have expressly excluded and continue to exclude the Plaintiffs. As a result of the deliberate actions of B.C., the Plaintiffs have suffered damages by the loss of their aboriginal rights and title, by the loss of respect and preservation of their aboriginal property, by the loss of business opportunities, loss of employment opportunities for the Plaintiffs, and the loss of the right to treat with the government as aboriginals, all of

which is contrary to the *Constitution Act, 1867, The North-Western Territory and Rupert's Land Order, British Columbia Terms of Union, 1871, and the Constitution Act, 1982*, sections 35, 25 and 15.

16. The Plaintiffs have suffered and continue to suffer discrimination by failing to treat the Plaintiffs as aboriginals, by failing to provide services provided to other people residing in British Columbia, by failing to consult with the Plaintiffs, and elsewhere as herein before set out, and the Plaintiffs will continue to suffer such discrimination unless otherwise ordered by this Honourable Court.
17. B.C., contrary to their fiduciary, equitable and common law obligations to the Plaintiffs and to the constitutional requirement to recognize their rights and title pursuant to section 35 of the *Constitution Act, 1982*, has failed and continues to fail to act in the best interests of the Plaintiffs, has failed and continues to fail to ensure the welfare, and well-being of the Plaintiffs, and to breach their fiduciary, trust-like, statutory, common law, equitable and constitutional obligations owed to the Plaintiffs.
18. B.C. has failed and continues to fail to protect and preserve the aboriginal rights, interests and title of the Plaintiffs, not limited to but including:
 - a) failing to protect and preserve their aboriginal rights and title to their Traditional lands including the natural resources thereof;
 - b) failing to prevent interference with and breach of the Plaintiff's rights, traditions and culture;
 - c) failing to compensate the Plaintiffs for interference with, occupation of, and non-aboriginal use of, the Traditional Lands without consultation and accommodation;
 - d) destroying the Plaintiff's way of life;
 - e) failing to ensure the participation of the Plaintiffs in the development of the resources of the Traditional Lands;

- f) failing to provide fair compensation for the use of the Plaintiffs' rights and title to the Traditional Lands;
 - g) failing to prevent the removal and destruction of trees, crops, plants, vegetation, wildlife, medicines from plants, and sacred sites, and other natural features of the Traditional Lands;
 - h) granting to third parties, various authorizations, permits, licences, contracts, and other documentation with respect to the Traditional Lands and the natural resources thereof, contrary to *Constitution Act, 1867, The North-Western Territory and Rupert's Land Order, British Columbia Terms of Union, 1871, and the Constitution Act, 1982*;
 - i) discrimination against the Plaintiffs by failing to include them in the treaty process established in British Columbia;
 - j) such further and other breaches of fiduciary, trust-like, equitable, statutory, common law and constitutional obligations as may be proven at the trial of this action.
19. The Plaintiffs have not been provided with the basic services provided to all other citizens in the Province of British Columbia, including but not limited to:
- a) has failed to ensure adequate and equivalent schooling and education for the children of Kelly Lake;
 - b) has failed to provide post-secondary education, adult education, and skills development funding within or near to Kelly Lake;
 - c) has failed to provide funding for community development;
 - d) has failed to provide fair and equitable access to employment within the Traditional Lands;

- e) has limited and blocked access to employment within the Traditional Lands to the Plaintiffs because they are aboriginal peoples.
- f) has interfered with the Plaintiffs' economic relations by discriminating against the Plaintiffs because they are aboriginal;
- g) has promoted tensions and strife between peoples living in Kelly Lake to the benefit of B.C. so that B.C. has not been required to provide programs and benefits which otherwise would have been provided;
- h) has failed to provide access to health care services including emergency services, ambulance services, elders' facilities, and extended health care facilities;
- i) has failed to ensure safe and clean drinking water;
- j) has failed to provide and maintain adequate and safe roads and has failed to regulate the use of roads within the Traditional Lands;
- k) such further and other matters as may be proven at the trial of this action.

21. B.C. has failed in their actions, but not limited to the following:

- a) failed to ensure equal community services;
- b) failed to protect sacred burial and spiritual sites;
- c) failed to protect archaeological sites;
- d) such further and other matters as may be proven at the trial of this action.

22. As a result of these breaches of fiduciary, statutory, common law, equitable, and constitutional duties and obligations, B.C. has caused the Plaintiffs to suffer:

- a) discriminatory and unsafe living conditions;
- b) substandard and non-existent health care;

- c) substandard and non-existent educational and training opportunities;
- d) loss of historical, ceremonial, spiritual and cultural sites;
- e) substandard social programs and services;
- f) other damages which may be proven at the trial of this action.

23. The Plaintiffs plead and rely upon the *Royal Proclamation of 1763*; the *Constitution Act, 1867*; the *Rupert's Land and Northwestern Territory Order, British Columbia Terms of Union, 1871*, and the *Constitution Act, 1982*; *Court Order Interest Act*, R.S.B.C. 1996, c. 79 as am.; *Crown Proceeding Act*, R.S.B.C. 1996, c. 89 as am., *International Covenant on Civil and Political Rights, 1966*, UN. C. Doc. A/6316; *International Covenant on Economic, Social and Cultural Rights, 1966*, UN. Doc. A/6316; *United Nations Declaration on the Rights of Indigenous Peoples, UN. Doc. A/61/L.67Annex*; and all other legislation previously plead.

Part 2: RELIEF SOUGHT

THE PLAINTIFFS COLLECTIVELY CLAIM AS FOLLOWS:

1. A Declaration that the Plaintiffs have always had and continue to have aboriginal title to their Traditional Lands;
2. A Declaration that the Plaintiffs have always had and continue to have aboriginal rights to carry on hunting, fishing, trapping, gathering, ceremonial, spiritual and other traditional activities for the purposes of food, clothing, shelter and a continuation of their traditional way of life within the Traditional Lands;
3. A Declaration that B.C. recognizes the Plaintiffs as equal citizens in the Province of British Columbia, entitled to the same level of services as all other residents of the Province;
4. Damages in the amount of \$50,000,000.00 from B.C. for infringement to the aboriginal title and rights of the Plaintiffs within their Traditional Lands;
5. General damages for negligence, breach of fiduciary duty and breach of statutory and constitutional obligations;

6. Aggravated or exemplary damages in the sum of \$10,000,000.00 or such amount as may be proven at the trial of this action based on B.C.'s actions as set out above;
7. A mandatory injunction compelling BC to provide access to health care and emergency hospital services in British Columbia within a reasonable distance to provide a response to ensure life, liberty and security of the person and the right not be deprived thereof except in accordance with the principles of fundamental justice;
8. Pre-judgment and Post-judgment interest;
9. Advance payment of the Plaintiffs costs and expenses in the prosecution of this action; and
10. Such further and other relief, including equitable relief, as this Honourable Court may allow.

Part 3: LEGAL BASIS

1. *Royal Proclamation of 1973*;
2. *Constitution Act, 1867 and 1982*;
3. *Rupert's Land and Northwestern Territory Order*;
4. *British Columbia Terms of Union, 1871*;
5. *Court Order Interest Act*, R.S.B.C 1996, c. 79 as am.; and
6. *Crown Proceeding Act*, R.S.B.C. 1996, c. 89 as am.

Plaintiffs' address for service:	Davis LLP 1201 Scotia Tower 2 10060 Jasper Avenue Edmonton, AB T5J 4E5	Davis LLP 2800 Park Place 666 Burrard Street Vancouver, BC V6C 2Z7
Fax number address for service (if any):	780.702.4383	604.605.3796
E-mail address for service (if any):	pkennedy@davis.ca	anyce@davis.ca
Place of trial:	Vancouver B.C.	
The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1	

Dated

July 8, 2010.

Signature of lawyer for plaintiffs
Davis LLP (Priscilla Kennedy)



Dated

July 8, 2010

Signature of lawyer for plaintiffs
Davis LLP (Angeline Nyce)



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:

The Plaintiffs claim for recognition of their aboriginal rights in their Traditional Lands, for the failure to consult with, for the failure to accommodate, and for discrimination against these peoples for services as citizens within British Columbia.

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: THIS CLAIM INVOLVES:

This is a claim for aboriginal rights and title (Section 35 of the *Constitution Act, 1982*) and for damages for interference with and failure to consult with and to recognize and remedy interference with the Plaintiff's Traditional Lands. This claim includes a claim for discrimination in the treatment of these people within British Columbia in, *inter alia*, education, health care, community services, economic development and opportunity.