



No. Court File No. VLC-S-S-238509  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

NISGA'A NATION as represented by NISGA'A LISIMS GOVERNMENT

Plaintiff

and

UNKNOWN PERSONS operating as the "RAVEN CLAN OUTLAWS", WILHELM MARSDEN, JOHN DOE, and JANE DOE

Defendants

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff 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,

- (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 Plaintiff**

#### **Part 1: STATEMENT OF FACTS**

##### **A. Parties**

1. The plaintiff, the Nisga'a Nation, is defined in Chapter 1 – *Definitions* of the Nisga'a Final Agreement (the "Nisga'a Treaty") as the collectivity of those Aboriginal people who share the language, culture and laws of the Nisga'a Indians of the Nass Area, and their descendants.
2. Under paragraph 5 of Chapter 11 – *Nisga'a Government* of the Nisga'a Treaty, the Nisga'a Nation is a distinct legal entity with the capacity, rights, powers, and privileges of a natural person. Under paragraph 7 of this Chapter, the Nisga'a Nation acts through Nisga'a Lisims Government.
3. The defendant, Mr. Wilhelm Marsden, is an individual who is currently occupying, altering and using, to the exclusion of others, certain Crown lands located between Kilometer 11 and Kilometer 13 of the Nass Forest Service Road in northern British Columbia, 55°33'38.65" N 128°40'15.11" W (the "Site"). Mr. Marsden is a member of the Gitanyow band under the *Indian Act*, R.S.C. 1985, c. I-5, and asserts that he holds the Indigenous chieftan title of "Gamlaxyeltxw" as a member of an Indigenous people who assert Aboriginal rights and title as the "Gitanyow Hereditary Chiefs" (the "Gitanyow").
4. The defendants, Jane Doe, John Doe, and other unknown persons are individuals who currently occupy, alter, or use, to the exclusion of others, the Site. These individuals, along with Mr. Marsden, collectively refer to themselves as the "Raven Clan Outlaws", and have plans to continue occupying, altering and using the Site, as set out below and as detailed in their various websites, including: <https://www.ravenclanoutlaws.com/>; <https://www.kitwancool.com/>; and the Facebook pages for Mr. Marsden and the "Ravens Nest Ranch" (collectively, the "Websites").

5. The defendants identified in paragraphs 3 and 4 are collectively referred to herein as the “Defendants”.

### **B. The Nisga’a Treaty, Nass Wildlife Area, and Site**

6. The Nisga’a Nation is a party to the Nisga’a Treaty, along with His Majesty the King in right of Canada (the “federal Crown”) and His Majesty the King in right of British Columbia (the “provincial Crown”).

7. The Nisga’a Treaty is a treaty and land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*. It addresses all aspects of the continuing relationship between the Nisga’a Nation and the federal and provincial Crowns, and sets out Nisga’a rights under section 35 of the *Constitution Act, 1982*.

8. The Nisga’a Treaty came into effect on May 11, 2000.

9. Under sections 3 and 5 of the *Nisga’a Final Agreement Act, S.B.C. 1999, c. 2*, and sections 4 and 5 of the *Nisga’a Final Agreement Act, S.C. 2000, c. 7*, the Nisga’a Treaty has the force of law and is binding on all persons. The Nisga’a Treaty is therefore enforceable as an enactment and is binding on all persons, including persons such as the Defendants who are not parties to the Nisga’a Treaty.

10. Paragraphs 1 and 2 of Chapter 9 – *Wildlife and Migratory Birds* (“Chapter 9”) of the Nisga’a Treaty provide that “Nisga’a citizens have the right to harvest wildlife throughout the Nass Wildlife Area in accordance with” the Nisga’a Treaty, subject to “measures that are necessary for conservation” and “legislation enacted for the purposes of public health or public safety”, and that this is a right to harvest in a manner that “does not interfere with other authorized uses of Crown land”.

11. Chapter 1 – *Definitions* of the Nisga’a Treaty defines “Nass Wildlife Area” to mean the area described in Appendix J of the Nisga’a Treaty. The entirety of the Site is located within the Nass Wildlife Area.

12. In accordance with the foregoing, the Nisga’a Nation has at all material times held a constitutionally protected treaty right to harvest wildlife on and throughout the Site, subject only to specific uses that are authorized by the provincial Crown in accordance with the Nisga’a Treaty. The provincial Crown has not authorized any such use at the Site in respect of the Defendants or any of them.

### **C. The Defendants and the Site**

13. Mr. Marsden and other Gitanyow claimants commenced an action against the federal and provincial Crowns in this honourable Court (Action No. S-036687) on December 10, 2003 (the “Gitanyow Action”). In the Gitanyow Action, Mr. Marsden and other Gitanyow claimants

seek, among other things, a declaration from this Court that the Gitanyow have existing Aboriginal title and rights in certain parts of the Nass Wildlife Area, including the Site. The Nisga'a Nation and the provincial and federal Crowns oppose the relief sought in the Gitanyow Action, and deny the rights being alleged by the Gitanyow. The issues raised in the Gitanyow Action remain outstanding and no trial has been held.

14. Neither Mr. Marsden nor any other Gitanyow claimant has entered into a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* generally or in respect of the Site.

15. Unless and until any of the Gitanyow claimants, including Mr. Marsden, succeed in the Gitanyow Action or enter into a treaty or land claims agreement establishing any Aboriginal rights or title, they only assert but have not proven or established any Aboriginal title and rights, including to the Site.

16. In the meantime, the interaction between the Nisga'a Nation's established treaty rights and the unproven rights asserted by Mr. Marsden and other Gitanyow claimants was addressed in *Gamlaxyeltxw v. British Columbia (Minister of Forests, Lands & Natural Resource Operations)*, 2020 BCCA 215 ("*Gamlaxyeltxw*"). Mr. Marsden and other Gitanyow claimants were parties to *Gamlaxyeltxw*. In *Gamlaxyeltxw*, Mr. Marsden and other Gitanyow claimants "acknowledge[d] that accommodation of their interests cannot require the [Crown] to act in contravention of the Nisga'a Treaty" (para. 10). Moreover, the Court held that "the Crown cannot be required to breach a treaty in order to preserve a right whose scope has not yet been determined" (para. 13).

17. Despite Mr. Marsden's acknowledgment in *Gamlaxyeltxw* and despite the fact that the Mr. Marsden and other Gitanyow claimants have not established any of the Aboriginal title and rights they assert in the Gitanyow Action, the Defendants, or some of them, seek to exercise a claimed right to occupy, alter and use the Site further to their unproven assertions in respect of the Site in a way that contravenes the Nisga'a Treaty.

18. More particularly, Nisga'a Lisims Government learned in or about July 2023, that the Defendants, or some of them, have, among other things:

- a. occupied the Site;
- b. damaged forest resources, including clear cutting timber, at the Site;
- c. erected permanent cabins and structures at the Site, including the "Ravens Nest Ranch", which is described by the Defendants on their Websites as an "off grid permaculture farm";
- d. erected an electric fence on portions of the Site;

- e. prohibited or restricted access to the Site;
- f. raised livestock, including for purposes of sale, at the Site;
- g. grown cannabis and promoted the sale of cannabis at the Site; and
- h. conducted various other commercial activities at the Site.

(collectively, the “Activities”)

19. The Defendants, or some of them, claim on their Websites that they are “Outlaws” that “do not recognize Provincial legislation” or “Federal legislation” on their asserted “traditional lands”, which includes the Site. No Defendant has therefore received any authorization from the federal or provincial Crown to conduct any of the Activities at the Site in accordance with the various federal and provincial laws that apply to the Site, including by:

- a. occupying and possessing Crown land without lawful authority, contrary to section 60(a) of the *Land Act*, R.S.B.C. 1996, c. 245;
- b. using Crown land without lawful authority, contrary to section 60(b) of the *Land Act*;
- c. constructing on Crown land buildings, structures, enclosures and other works, and performing excavation and filling, without authorization, contrary to section 60(e) of the *Land Act*;
- d. carrying out a forest practice and other activities that result in damage to the environment on Crown land, without authorization, contrary to section 46(1) of the *Forest and Range Practices Act*, S.B.C. 2002, c. 69;
- e. growing, possessing and promoting for sale cannabis, without authorization, contrary to the *Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, and the *Cannabis Act*, S.C. 2018, c. 16;
- f. raising livestock for purposes of sale, without authorization, contrary to, *inter alia*, section 60(b) of the *Land Act*, the *British Columbia Chicken Marketing Scheme, 1961*, and the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330; and
- g. depositing, dumping and causing to be placed on Crown land, glass, metal, garbage, soil and other substances, without authority, contrary to section 67(1) of the *Land Act*.

#### **D. Treaty Interference at the Site**

20. The Activities of the Defendants, or some of them, at the Site have wrongfully interfered with and continue to wrongfully interfere with the Nisga'a Nation's constitutionally protected rights under the Nisga'a Treaty to harvest wildlife on and throughout the Site, including by precluding Nisga'a citizens from harvesting wildlife such as grouse and moose at the Site under the Nisga'a Treaty. For example, Nisga'a citizens cannot safely harvest wildlife in or around the Site by discharging firearms due to, among other things, the Defendants' occupancy of, and structures constructed at, the Site. But for the Activities, Nisga'a citizens have and would exercise their rights under the Nisga'a Treaty to harvest wildlife on and throughout the Site.

21. The Defendants, or some of them, have published on their Websites their plans to not only continue but expand their Activities at and beyond the Site. The Defendants' Activities at the Site are therefore ongoing and expected to continue to be ongoing.

22. To date, no provincial officials empowered to enforce provincial laws have intervened to protect the exercise of Nisga'a treaty rights at the Site or have otherwise enforced other relevant provincial enactments, despite various and repeated demands made by Nisga'a Lisims Government to the appropriate provincial ministries.

23. The Activities of the Defendants, or some of them, at the Site have caused and will cause the Nisga'a Nation the following harm and resulting damages:

- a. interference with treaty harvesting rights;
- b. unwarranted stress and nuisance; and
- c. such other losses and damages as may be incurred by the Nisga'a Nation.

24. The Nisga'a Nation continues to incur harm and resulting damages, and the quantum of damages will be assessed prior to the trial of this matter.

#### **Part 2: RELIEF SOUGHT**

25. The Nisga'a Nation claims the following relief:

- a. interim, interlocutory and permanent injunctions restraining the Defendants, and all other persons having knowledge of the orders, and each of them, from conducting any ongoing or future Activities at the Site, or otherwise interfering with Nisga'a citizens' treaty rights to harvest wildlife at the Site, until further order of this Court (including through the resolution of the Gitanyow Action);

- b. a declaration that the Defendants' Activities at the Site wrongfully interfere with the Nisga'a Nation's treaty rights within the Site;
- c. appropriate terms authorizing the police or other provincial officials empowered to enforce provincial laws at the Site to enforce the orders of this Court, including by arrest;
- d. damages;
- e. interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- f. costs; and
- g. such further and other relief which this honourable Court may deem just and equitable.

### **Part 3: LEGAL BASIS**

26. The Nisga'a Nation's treaty right to harvest wildlife on and throughout the Site is set out in a constitutionally-protected treaty, which has the force of law and is binding on all persons, including the Defendants and each of them.

27. No Defendant has any authority to interfere with the said Nisga'a treaty rights. Accordingly, the Defendants, and each of them, have and continue to wrongfully interfere with the Nisga'a Nation's harvesting rights at the Site under the Nisga'a Treaty, as more particularly set out above, have refused to cease such interference, and intend to continue such interference if not restrained from doing so.

28. The Nisga'a Nation relies on the provisions of the:

- a. Nisga'a Treaty;
- b. *Nisga'a Final Agreement Act*, S.B.C. 1999, c. 2, and in particular, sections 3 and 5;
- c. *Nisga'a Final Agreement Act*, S.C. 2000, c. 7, and in particular, sections 4, 5 and 7;
- d. *Law and Equity Act*, R.S.B.C. 1996, c. 253, and in particular, section 39; and
- e. *Supreme Court Civil Rules*.

The Plaintiff's address for service is:

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Place of trial: Vancouver, British Columbia

The address of the registry is:

800 Smithe Street  
Vancouver, BC, V6Z 2E1

Date: 14/DEC/2023



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Signature of lawyer for Plaintiff  
Micah Clark

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 Plaintiff's claim is against the Defendants for loss and damages resulting from their interference with the Nisga'a Nation's rights as set out under the Nisga'a Treaty.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

none of the above

*The Court Order Interest Act, R.S.B.C. 1996, c. 79; Nisga'a Final Agreement Act, S.B.C. 1999, c. 2; Nisga'a Final Agreement Act, S.C. 2000, c. 7; Law and Equity Act, R.S.B.C. 1996, c. 253; and Supreme Court Civil Rules.*