

MAR 03 2015

S-151727

Form 1 (Rule 3-1(1))



NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Marvin Yahey on his own behalf and on behalf of all other
Blueberry River First Nations beneficiaries of Treaty No. 8
and the Blueberry River First Nations

PLAINTIFFS

AND:

Her Majesty the Queen in Right of the Province of British Columbia

DEFENDANT

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 PLAINTIFFS

Part 1: STATEMENT OF FACTS

Introduction

1. Blueberry River First Nations brings this claim against the Crown to stop the consistent and increasingly accelerated degradation of the Nations' traditional territory, and to protect and enforce the Nations' constitutionally protected rights under Treaty 8 against the cumulative impacts of Crown authorized activities on their traditional territory.
2. As set out below, in seeking the Nations' consent that their territory be opened for settlement in or around 1900, Her Majesty the Queen promised the ancestors of Blueberry River First Nations that they and their descendants were ensured their rights to carry on their modes of life and means of earning economic livelihoods, including by hunting, trapping and fishing.
3. At the time of making the Treaty, the Crown assured the ancestors of the Blueberry River First Nations that it was in both parties' interests that the Nations must be able to carry on their traditional and economic activities so as to maintain themselves productively, in good health and well-being, and so as not to become dependent upon the Crown.
4. On the basis of the promises and assurances made by Her Majesty, and the trust placed in Her Majesty, the ancestors of the Blueberry River First Nations consented to allowing their traditional territory to be opened for settlement, on the conditions established by the Treaty.
5. However, the Crown has not maintained its promises. Instead of furthering or protecting Blueberry River First Nations' interests, the Crown in right of the Province of British Columbia has consistently made choices to undertake or allow land alienation, resource extraction and industrial activities in the traditional territories upon which the Nations' culture, economy and Treaty rights depend. These activities have damaged the forests, lands, waters, fish and wildlife that are integral to the Nations' mode of life, and upon which the Nations rely. Rather than protecting the Blueberry River First Nations' mode of life, these Crown choices have contributed significantly to an impoverishment of it.
6. The cumulative impacts of these activities have consistently and increasingly pushed the Blueberry River First Nations to the margins of their traditional territory, and have now left the members with almost no traditional territory within which to meaningfully pursue their constitutionally protected cultural and economic activities.
7. Blueberry River First Nations seek declaratory and injunctive relief against the Crown to prevent further cumulative impacts to their traditional territory, and to end the further erosion of any meaning from their Treaty rights. The relief is sought based on breaches of the Crown's legal duties to uphold the promises made in the Treaty, to act honourably in the performance of the Treaty obligations, and to act in the interests of the Blueberry River First Nations, as a fiduciary must.

The Parties

The Plaintiffs

8. Blueberry River First Nations (“Blueberry”) is a band within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5 and is an aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
9. Blueberry traditional territory is located in the Upper Peace River region of northeast British Columbia.
10. Blueberry is one of two successor First Nations to the Fort St. John Beaver Indians that adhered to Treaty 8 (the “Treaty”). The other successor is Doig River First Nation (“Doig”).
11. Marvin Yahey is an Aboriginal person within the meaning of s. 35 of the *Constitution Act, 1982*, an Indian as defined by the *Indian Act*, and a member and elected Chief of Blueberry. He is authorized to bring this action on behalf of Blueberry and its members.

The Defendant

12. The Defendant Her Majesty the Queen in Right of the Province of British Columbia is named in these proceedings pursuant to s. 7 of the *Crown Proceedings Act*, R.S.B.C. 1996, c. 89, and is that emanation of the Crown that holds the beneficial interest to the lands material to the issues in this proceeding, subject to the interests of the Plaintiffs.
13. The Defendant has the exclusive power to manage and regulate the lands material to the issues in this proceeding, as well as the resources on or under those lands, pursuant to ss. 109, 92(5) and 92A of the *Constitution Act, 1867*, subject to the terms of the Treaty and the Plaintiffs’ interests.
14. The Defendant is, along with Her Majesty the Queen in Right of Canada, responsible for upholding the Crown promises made in the Treaty.

The Treaty

15. The Treaty is a treaty within the meaning of s. 35 of the *Constitution Act, 1982*. On June 21, 1899, the Treaty was originally made and concluded at Lesser Slave Lake between Her most Gracious Majesty the Queen of Great Britain and Ireland (“the Crown”) and the Chief and Headmen of the Indians of Lesser Slave Lake and adjacent country. The Treaty was ratified by Order in Council 363 on February 2, 1900.
16. On May 30, 1900, 46 members of the Beaver Indians from Fort St John, the ancestors of the present-day Blueberry and Doig, adhered to the Treaty.

The Treaty Rights

17. The Treaty created reciprocal rights and obligations on the part of the Plaintiffs and the Crown.
18. The Crown required and sought the consent of the Plaintiffs' ancestors to open the tract of land they inhabited for settlement and other activities.
19. The Plaintiffs' ancestors gave this consent in exchange for the solemn promises made by the Crown, including that:
 - a) The Treaty, including the consent given by the Plaintiffs under the Treaty, would not lead to forced interference with the Plaintiffs' mode of life;
 - b) The same means of earning a livelihood and patterns of economic activity would continue for the Plaintiffs' ancestors and their descendants after the Treaty as existed before it, and that the Plaintiffs would be expected to continue to make use of these means.
20. These solemn promises included the express assurance that the Plaintiffs would be as free to hunt, trap and fish throughout their traditional territory as they had been before entering the Treaty.
21. These solemn promises also ensured other rights to the Plaintiffs, including but not limited to rights:
 - a) to undertake traditional and spiritual activities within the Plaintiffs' traditional territory;
 - b) to travel throughout the Plaintiffs' traditional territory;
 - c) to manage natural resources within the Plaintiffs' traditional territory; and
 - d) to gather various natural resources, including plants and berries within the Plaintiffs' traditional territory.
22. These solemn promises also ensured the Plaintiffs' rights to access to and protection and management of adequate quantities of clean and fresh water, capable of sustaining life within and around the Plaintiffs' traditional territory.
23. The Plaintiffs further have rights to engage in activities incidental to the exercise of the rights under the Treaty, including but not limited to the following:
 - a) the right to access the lands and waters necessary for hunting, trapping, and fishing;
 - b) the right to maintain adequate terrestrial and riparian habitat to support the activities of hunting, trapping and fishing;
 - c) the right to maintain and access traplines and trapline infrastructure, including trails and cabins; and

- d) the right to maintain and access teaching sites in order to be able to pass on the Plaintiffs' traditional mode of life.

(collectively, the rights set out in paragraphs 19 to 23 are the Plaintiffs' "Treaty Rights")

- 24. The portion of their traditional territory within which the Plaintiffs traditionally exercised their Treaty Rights, including the rights to hunt, trap, fish and gather, is outlined on the map attached as Schedule 1 to this claim. This area is hereinafter referred to as the "Traditional Territory".
- 25. The Traditional Territory is wholly within the land designated in the Treaty.
- 26. Pursuant to the Treaty, the Defendant's obligations include:
 - a) not to displace the Plaintiffs or force interference with the Plaintiffs' mode of life, or to permit the doing of these things;
 - b) not to restrain the Plaintiffs' means of earning a livelihood by exercise of the Plaintiffs' Treaty Rights;
 - c) not to force or permit interference with the Plaintiffs' traditional patterns of economic activities;
 - d) not to interfere, and to prevent interference, with the meaningful exercise of the Plaintiffs' Treaty Rights;
 - e) to exercise any rights under the Treaty to make regulations or to take up land honourably and in a manner that does not interfere with the Plaintiffs' continued meaningful exercise of the Treaty Rights; and
 - f) to manage and protect the lands designated under the Treaty, and adjacent lands, including the waters and ecosystems within those lands, in such a way as to seek to:
 - i. minimize impacts on the Treaty Rights; and
 - ii. ensure the continued meaningful exercise of the Treaty Rights by the Plaintiffs.
- 27. The Defendant has breached its Treaty obligations to the Plaintiffs.
- 28. The Defendant has not sought or received the consent of the Plaintiffs to breach the Treaty or infringe the Plaintiffs' Treaty Rights.

Industrial Development within the Plaintiffs' Traditional Territory

29. The Defendant has discretionary control over the management of the Plaintiffs' Traditional Territory. The Defendant has authorized extensive industrial development within, and adjacent to, the Traditional Territory.
30. The Defendant has authorized activities, projects and developments within, and adjacent to, the Plaintiffs' Traditional Territory, including but not limited to the following types of activities, projects and developments:
- a) oil and gas;
 - b) forestry;
 - c) mining;
 - d) hydroelectric infrastructure;
 - e) roads and other infrastructure;
 - f) agricultural land clearing;
 - g) land alienation and encumbrance; and
 - h) other industrial development (collectively the "Industrial Developments").
31. The Defendant authorized the Industrial Developments without regard to the potential cumulative effects and consequent adverse cumulative impacts of the Industrial Developments on the Plaintiffs' continuing meaningful exercise of its Treaty Rights, including without:
- a) seeking to ensure that sufficient Traditional Territory remained available, after regulation and any taking up, for the meaningful exercise of the Plaintiffs' Treaty Rights;
 - b) obtaining sufficient information concerning the nature and extent of the Treaty Rights, and the conditions necessary for sustaining the meaningful exercise of those rights;
 - c) obtaining sufficient information to understand the potential cumulative impacts of the Industrial Developments within and adjacent to the Traditional Territory;
 - d) informing itself, or sufficiently informing itself, of the potential cumulative impacts of the Industrial Developments within, and adjacent to, the Traditional Territory on the continued meaningful exercise of the Treaty Rights;
 - e) assessing, monitoring and managing the cumulative impacts of the Industrial Developments within and adjacent to the Traditional Territory;
 - f) planning the cumulative development within, and adjacent to, the Traditional Territory;
 - g) managing the pace, scale, location, nature and number of activities, projects, and developments within, and adjacent to, the Traditional Territory;

- h) establishing thresholds for impacts to the lands, waters, and wildlife within, and adjacent to, the Traditional Territory beyond which there will be or may be interference with the Plaintiffs' continued meaningful exercise of the Treaty Rights, and ensuring that the cumulative impacts of the Industrial Developments do not or will not exceed those thresholds;
- i) seeking to minimize impacts, including cumulative impacts, of the Industrial Developments on the Plaintiff's Treaty Rights; and
- j) fulfilling its obligation to manage and protect the Traditional Territory, and adjacent lands, including the waters and ecosystems within those lands, in such a way as to seek to minimize impacts on the Treaty Rights and to ensure the continued meaningful exercise of the Treaty Rights by the Plaintiffs.

Impacts of Industrial Development on the Exercise of Treaty Rights

32. The cumulative impacts of the Industrial Developments have resulted in:

- a) significant adverse impacts to the land, water, fish and wildlife and the exercise of the Plaintiffs' Treaty Rights within the Traditional Territory, and
- b) the loss of the Plaintiffs' ability to meaningfully exercise some or all of the Plaintiffs' Treaty Rights in the Traditional Territory.

33. The cumulative impacts of the Industrial Developments have resulted in the following within the Plaintiff's Traditional Territory, without limitation:

Destruction and loss of access to territory

- a) destruction of and loss of access to key hunting, trapping, fishing and gathering areas;
- b) destruction of and loss of access to traditional and spiritual areas and sites;
- c) destruction and loss of access to key habitation sites;
- d) landscape fragmentation resulting in the reduction and loss of the ability of Blueberry members to know and effectively navigate their territory by land and water;
- e) destruction of traditional travel ways, including trails;
- f) reduction and loss of access to traditional foods sufficient to sustain the Plaintiffs' culture, health and mode of life;
- g) destruction and loss of access to teaching sites resulting in the loss of the ability to pass on the Plaintiffs' traditional mode of life, including reduced Dane-zaa language retention and transmission;

Harm to wildlife

- h) diminution in the abundance, health and diversity of wildlife;
- i) alteration of migration patterns of wildlife, including caribou and furbearers;

- j) fragmentation of wildlife habitat, including the destruction and loss of mineral licks, calving areas, and wintering grounds;
- k) qualitative and quantitative impacts to wildlife habitat;

Damage to water, land and air

- l) impacts to riparian systems and water quality and quantity, such that Blueberry members no longer feel safe drinking water from the Traditional Territory or bathing in areas of traditional importance;
- m) contamination of air, land, and water and corresponding impacts on human health;

Harm to fish

- n) diminution in the abundance, health and diversity of fish;
- o) qualitative and quantitative impacts to fish habitat;

Harm to plants

- p) reduced abundance, quality and access to berries; and
- q) reduced abundance, quality and access to traditional plants and medicines.

34. The Plaintiffs have suffered further losses resulting from the cumulative impacts of the Industrial Developments, including:

- a) loss of the Plaintiffs' use and enjoyment of lands within their Traditional Territory and injury to the remaining lands and the meaningful exercise of the Plaintiffs' rights thereon;
- b) displacement of Plaintiff hunters, trappers and fishers from areas used for Industrial Developments;
- c) curtailment of the continuity of the Plaintiffs' traditional patterns of economic activity; and
- d) loss of the Plaintiffs' preferred means of exercising the Treaty Rights.

35. The cumulative effects of the Industrial Developments have had significant adverse impacts on the meaningful exercise of the Plaintiffs' Treaty Rights, breached the Treaty and infringed the Plaintiffs' Treaty Rights, including by:

- a) forcibly interfering with the Plaintiffs' mode of life;
- b) restraining the Plaintiffs' means of earning a livelihood; and
- c) significantly curtailing the Plaintiffs' ability to exercise their Treaty Rights, such that the Plaintiffs have been left with no meaningful right to exercise some or all of their Treaty Rights within their Traditional Territory.

36. The Plaintiffs' have made their concerns regarding the cumulative impacts of the Industrial Developments on the continued meaningful exercise of their Treaty Rights, and the resulting

breach of the Treaty and infringement of their Treaty rights, known to the Defendant, but the Defendant has failed or refused to adequately address the impacts to and infringement of those rights.

37. The Defendant has not taken any, or sufficient, steps to prevent the breach of the Treaty, address the infringement of the Treaty Rights, or to ameliorate the impacts of the Industrial Developments on the continued meaningful exercise of the Plaintiffs' Treaty Rights.
38. The Defendant has continued, and will continue unless restrained from doing so, to undertake or approve activities, projects and developments within the Traditional Territory contrary to the Defendant's obligations under the Treaty.

Part 2: RELIEF SOUGHT

WHEREFORE the Plaintiffs claim as follows:

1. A declaration that, in causing and/or permitting the cumulative impacts of the Industrial Developments on the Plaintiffs' Treaty Rights in their Traditional Territory, the Defendant has breached its obligations to the Plaintiffs under the Treaty;
2. A declaration that the Defendant has infringed upon some or all of the Plaintiffs' Treaty Rights by causing and/or permitting the cumulative impacts of the Industrial Developments on the Plaintiffs' Treaty Rights in their Traditional Territory;
3. A declaration that the Defendant may not lawfully continue to authorize activities that breach the promises made by the Crown to the Plaintiffs in the Treaty or that infringe the Treaty Rights;
4. A declaration that the Defendant has breached its fiduciary obligations to the Plaintiffs by undertaking, causing and/or permitting some or all of the Industrial Developments within and adjacent to the Plaintiffs' Traditional Territory;
5. An interim injunction restraining the Defendant from undertaking, causing and/or permitting activities that:
 - a) breach the Defendant's obligations to the Plaintiffs under the Treaty;
 - b) infringe the Plaintiffs' Treaty Rights; or
 - c) breach the Defendant's fiduciary obligations to the Plaintiffs.
6. A permanent injunction restraining the Defendant from undertaking, causing and/or permitting activities that
 - a) breach the Defendant's obligations to the Plaintiffs under the Treaty;
 - b) infringe the Plaintiffs' Treaty Rights; or

- c) breach the Defendant's fiduciary obligations to the Plaintiffs.
- 7. Costs; and
- 8. Such further and other relief as this Honourable Court may deem appropriate.

Part 3: LEGAL BASIS

The facts set out above establish that:

1. The Plaintiffs have rights under the Treaty against the curtailment by the Crown of the mode of life and means of earning a livelihood that the Plaintiffs enjoyed before entering the Treaty. These rights include the preservation of meaningful rights to hunt, trap, fish and gather within the Plaintiffs' Traditional Territory against incursions undertaken, caused or authorized by the Crown.
2. The existing treaty rights of the Aboriginal peoples of Canada are recognized and affirmed by the *Constitution Act, 1982*.
3. The Defendant is bound by the Treaty, as both levels of government are responsible for fulfilling the promises in the Treaty, in accordance with the division of powers under the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.
4. The exercise of the Defendant's rights under the Treaty, including any rights to make regulations or to take up lands, are subject to and burdened by the Defendant's obligations to the Plaintiffs under the Treaty, the Constitution and the legal doctrine of the honour of the Crown. The Defendant must act in a way that seeks to preserve and accomplish the intended purposes of the Treaty Rights, and seeks to minimize impacts on the Treaty Rights and to ensure the continuing meaningful exercise of the Treaty Rights by the Plaintiffs.
5. The Defendant has undertaken, caused and/or authorized extensive Industrial Developments within, and adjacent to, the Plaintiffs' Traditional Territory, which has resulted in:
 - a) forcible interference with the Plaintiffs' mode of life;
 - b) interference with the continuity of the Plaintiffs' traditional patterns of economic activity and restraint of the Plaintiffs' means of earning a livelihood;
 - c) significant curtailment of the Plaintiffs' ability to exercise their Treaty Rights, such that the Plaintiffs have been left with no meaningful right to exercise some or all of their Treaty Rights.
6. As such, the Defendant has breached and infringed, and continues to breach and infringe, the Treaty and the Treaty Rights of the Plaintiffs, contrary to its constitutional obligations and the legal doctrine of the honour of the Crown.

7. Further, or in the alternative, the Defendant has unlawfully caused adverse effects upon the Plaintiffs' Treaty Rights without having fulfilled the obligations required of the Defendant pursuant to the Treaty, the constitution and the legal doctrine of the honour of the Crown.
8. Further, or in the alternative, any rights of the Defendant under the Treaty to make regulations or to take up land are subject to the legal doctrine of the honour of the Crown and the fiduciary duties of the Crown to the Plaintiffs, including the duty to act in the interests of the Plaintiffs and to seek to ensure the continuing meaningful exercise of the Treaty Rights.
9. The Defendant's authorization of the Industrial Developments adversely impacted the ability of the Plaintiffs to meaningfully exercise their Treaty Rights within their Traditional Territory, contrary to the interests of the Plaintiffs. As such, the Defendant's authorization of the Industrial Developments constitutes a breach of fiduciary duty and, or in the alternative, the legal doctrine of the honour of the Crown.
10. Further, or in the alternative, by authorizing the extensive regulation and taking up of land for development as herein described, the Defendant has taken benefit from its discretionary control over the Plaintiffs' Traditional Territory, and has put its own strategic and financial interests in the development of the Traditional Territory before the Plaintiffs' interests. This conduct breaches the standards required pursuant to the legal doctrine of the honour of the Crown and the law of fiduciaries. The Crown has at all material times been required by law to meet one or both of these standards in its conduct toward the Plaintiffs.
11. Further, or in the alternative, the Defendant has failed to act with the reasonable care, skill and diligence required of it by law, as the Defendant failed to inform itself or the Plaintiffs of the potential cumulative impacts of the Industrial Developments on the exercise of the Plaintiffs' Treaty Rights or to consider the cumulative impacts upon the Plaintiffs in authorizing the Industrial Developments, and thus failed to seek to ensure the Plaintiffs' continuing meaningful exercise of their Treaty Rights. This conduct breaches the standards required pursuant to the legal doctrine of the honour of the Crown and the law of fiduciaries. The Crown has at all material times been required by law to meet one or both of these standards in its conduct toward the Plaintiffs.

Enactments

12. The Plaintiffs rely on the following enactments:
 - a) *Constitution Act, 1867*
 - b) *Constitution Act, 1982*; and
 - c) *Indian Act, R.S.C. 1985, c I-5.*

Plaintiff's address for service: Ratcliff & Company LLP
Barristers and Solicitors
Suite 500, 221 West Esplanade
North Vancouver, B.C. V7M 3J3

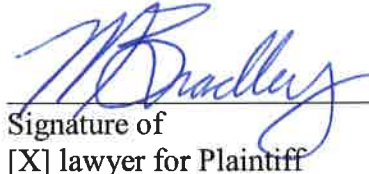
Fax number address for service (if any): 604-988-1452

E-mail address for service (if any): N/A

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street
Vancouver, B.C.

Date: 3 /MAR/2015



Signature of
[X] lawyer for Plaintiff

For: MAEGEN GILTROW

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:

A claim that in causing and/or permitting the cumulative impacts of the Industrial Developments the Defendant has breached and infringed, and continues to breach and infringe, Treaty 8 and the Treaty Rights of the Plaintiffs, and acted contrary to the Defendant's constitutional obligations, the legal doctrine of the honour of the Crown and the law of fiduciaries. The Plaintiffs seek declaratory and injunctive relief.

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:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Constitution Act, 1867

Constitution Act, 1982

Indian Act, R.S.C. 1985, c I-5.

Schedule 1 - Traditional Territory

