



This is the 1<sup>st</sup> affidavit  
of Parisa Shariati in this case  
and was made on March 19, 2024

Court File No.: S236214  
Court Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1392752 B.C. LTD.

PETITIONER

AND:

SKEENA SAWMILLS LTD.  
SKEENA BIOENERGY LTD and  
ROC HOLDINGS LTD.

RESPONDENTS

**AFFIDAVIT**

*FORM 109 (RULE 22-2(2) AND (7))*

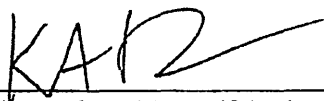
I, Parisa Shariati, Legal Assistant, of 3200 - 650 West Georgia Street, in the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a legal administrative assistant with Harper Grey LLP, counsel for the application respondent herein, the Gitanyow Nation, and as such I have personal knowledge of the matters and facts herein deposed to save and except where the same are stated to be made upon information and belief and as to the latter I verily believe them to be true.
2. Attached to this my affidavit and marked as **Exhibit "A"** is a true copy of an email string dated December 5 to December 13, 2023 between Drew Lawrenson, counsel for the

application respondents and Taylor Poirer, Anthony Tillman, Pinky Law, Glen Williams, Joel Starlund regarding: Letter re Skeena Timber License - Expression of Interest.

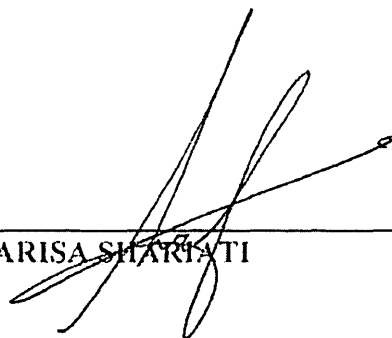
3. Attached to this my affidavit and marked as Exhibit "B" is a true copy of the Third Further Amended Notice of Civil Claim of Malii et al. filed May 19, 2023 in Action No. S036687.

AFFIRM BEFORE ME at Vancouver, in  
British Columbia, on March 19, 2024



A Commissioner for taking affidavits within  
British Columbia

(Print name or affix stamp of commissioner)



PARISA SHARIATI

**Kristina Davies**  
**Barrister and Solicitor**  
**Harper Grey LLP**  
**3200 - 660 W. Georgia Street**  
**Vancouver, BC V6B 4P7**

REDACTED

**From:** Drew Lawrenson

**Sent:** Wednesday, December 13, 2023 10:00 AM

**To:** Law, Pinky <pinkylaw@alvarezandmarsal.com>; Tillman, Anthony <atillman@alvarezandmarsal.com>; Poirier, Taylor <tpoirier@alvarezandmarsal.com>

**Cc:** Mark Starlund <Mark.Starlund@gitanyowband.ca>; Joel Starlund <joel.starlund@gitanyowchiefs.com>; Glen Williams <malii@gitanyowchiefs.com>

**Subject:** RE: Letter re Skeena Timber License - Expression of Interest

Good morning Pinky,

As you know there is obvious and high potential for significant adverse impacts to Gitanyow's rights resulting from the proposed license transfer on their traditional and ancestral lands.

My clients would like to meet at 10:30 as planned. Given travel schedules and prior engagements the noon appointment does not work without moving several other matters.

I am copying Chief Joel Starlund and Chief Glen Williams who have requested to attend the call as well.

Please add my clients to the invite.

Thank you

This is Exhibit "A" referred to in the  
affidavit of Parin Sharwati  
sworn before me at Vancouver, BC  
this 19 day of March, 20 24

*[Signature]*

A Commissioner for taking Affidavits  
within British Columbia

**Drew Lawrenson\***

Partner | **Harper Grey LLP**

T 604.895.2807 | F 604.669.9385

[Website](#) | [Unsubscribe](#) | [dlawrenson@harpergrey.com](mailto:dlawrenson@harpergrey.com)

\*Personal Law Corporation

**From:** Law, Pinky <[pinky.law@alvarezandmarsal.com](mailto:pinky.law@alvarezandmarsal.com)>

**Sent:** Wednesday, December 13, 2023 9:50 AM

**To:** Drew Lawrenson <[dlawrenson@harpergrey.com](mailto:dlawrenson@harpergrey.com)>; Tillman, Anthony <[atillman@alvarezandmarsal.com](mailto:atillman@alvarezandmarsal.com)>; Poirier, Taylor <[tpoirier@alvarezandmarsal.com](mailto:tpoirier@alvarezandmarsal.com)>

**Cc:** Mark Starlund <[Mark.Starlund@gitanyowband.ca](mailto:Mark.Starlund@gitanyowband.ca)>

**Subject:** RE: Letter re Skeena Timber License - Expression of Interest

Drew, Mark,

Apologies for the last minute request but would you be available to connect at 12nn PT instead?

Regards,

Pinky

Pinky Law, CPA, CA

Alvarez & Marsal Canada ULC

Direct: +1 604 638 7446

Mobile: +1 778 233 0130

[pinky.law@alvarezandmarsal.com](mailto:pinky.law@alvarezandmarsal.com)

-----Original Appointment-----

**From:** Law, Pinky

**Sent:** Tuesday, December 12, 2023 12:07 PM

**To:** Law, Pinky; Drew Lawrenson; Tillman, Anthony; Poirier, Taylor

**Cc:** Mark Starlund

**Subject:** Letter re Skeena Timber License - Expression of Interest

**When:** Wednesday, December 13, 2023 10:30 AM-11:00 AM (UTC-08:00) Pacific Time (US & Canada).

**Where:** Microsoft Teams Meeting

Updated to 10:30am PT as suggested by Drew.

## Microsoft Teams meeting

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 212 371 354 149

Passcode: 6Jo9TA

[Download Teams](#) | [Join on the web](#)

**Join with a video conferencing device**

[alvarezandmarsal@m.webex.com](mailto:alvarezandmarsal@m.webex.com)

Video Conference ID: 114 881 828 2

[Alternate VTC instructions](#)

**Or call in (audio only)**

+1 647-749-7010, 447190362# Canada, Toronto

Phone Conference ID: 447 190 362#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)


**From:** Drew Lawrenson <[dlawrenson@harpergrey.com](mailto:dlawrenson@harpergrey.com)>

**Sent:** Tuesday, December 12, 2023 12:05 PM

**To:** Law, Pinky <[pinky.law@alvarezandmarsal.com](mailto:pinky.law@alvarezandmarsal.com)>

**Cc:** Glen Williams <[malii@gitanyowchiefs.com](mailto:malii@gitanyowchiefs.com)>; Joel Starlund <[joel.starlund@gitanyowchiefs.com](mailto:joel.starlund@gitanyowchiefs.com)>; Tillman, Anthony <[atillman@alvarezandmarsal.com](mailto:atillman@alvarezandmarsal.com)>; Poirier, Taylor <[tpoirier@alvarezandmarsal.com](mailto:tpoirier@alvarezandmarsal.com)>

**Subject:** RE: Letter re Skeena Timber License - Expression of Interest

 [EXTERNAL EMAIL]: Use Caution

Pinky,

I am available.

Thank you

**Drew Lawrenson\***

Partner | Harper Grey LLP

T 604.895.2807 | F 604.669.9385

[Website](#) | [Unsubscribe](#) | [dlawrenson@harpergrey.com](mailto:dlawrenson@harpergrey.com)

\*Personal Law Corporation

**From:** Law, Pinky <[pinky.law@alvarezandmarsal.com](mailto:pinky.law@alvarezandmarsal.com)>

**Sent:** Tuesday, December 12, 2023 11:01 AM

**To:** Drew Lawrenson <[dlawrenson@harpergrey.com](mailto:dlawrenson@harpergrey.com)>

**Cc:** Glen Williams <[malii@gitanyowchiefs.com](mailto:malii@gitanyowchiefs.com)>; Joel Starlund <[joel.starlund@gitanyowchiefs.com](mailto:joel.starlund@gitanyowchiefs.com)>; Tillman, Anthony <[atillman@alvarezandmarsal.com](mailto:atillman@alvarezandmarsal.com)>; Poirier, Taylor <[tpoirier@alvarezandmarsal.com](mailto:tpoirier@alvarezandmarsal.com)>

**Subject:** RE: Letter re Skeena Timber License - Expression of Interest

Drew,

Would you be available tomorrow at 10am for a call?

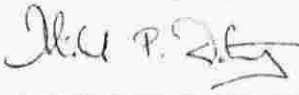
Thanks,


Pinky






Third Further Amended pursuant to Rule 6-1  
of the Supreme Court Civil Rules  
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,  
His Majesty the King in Right of  
the Province of British Columbia  
Michael P. Doherty

  
\_\_\_\_\_  
Lawyer for the Defendant,  
The Attorney General of Canada  
Susan Dawson

4  
This is Exhibit "B" referred to in the  
affidavit of Paria Shariati  
sworn before me at Vancouver, BC  
this 19 day of March, 2024  
  
\_\_\_\_\_  
A Commissioner for taking Affidavits  
within British Columbia

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 Robert Good, WATAKHAYETSW also known as Agatha Bright, GWINUU also known as Phyllis Haizimsque, WII'LITSXW also known as Gregory Rush, HAIZIMSQUE also known as Ken Russell, 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 HER MAJESTY THE KING QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA and THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

### THIRD SECOND 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 Robert Good, WATAKHAYETSW also known as Agatha Bright, GWINUU also known as Phyllis Haizimsque, WII'LITSW also known as Gregory Rush, HAZIMSQUE also known as Ken Russell, are the hereditary chiefs of the Gitanyow Nation (the "Gitanyow Chiefs") and bring this action on their own behalf and on behalf of all the members of the Gitanyow Nation ("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 Chiefs represent the 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 ~~Her~~ Majesty the King ~~Queen~~ in Right of Canada, pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended.
5. The Defendant, His ~~Her~~ Majesty the King ~~Queen~~ 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 Gitanyow Lax'yip is and has since time immemorial been the homeland of the Gitanyow and at all material times the Gitanyow exclusively occupied and exercised effective control over the Gitanyow Lax'yip. They have continued to occupy, control, use and maintain their connection to, and to use the resources of, the Gitanyow Lax'yip pursuant to Gitanyow Ayookxw (the legal system of the Gitanyow).
8. Gitanyow exclusive use and occupation of the Gitanyow Lax'yip is described in their Adaawk (oral histories), limx' ooy (songs), Ayuuks (crests), and on their Git'mgan (totem poles). These are prescribed and maintained by Gitanyow Ayookxw.
9. 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. Their aboriginal title to the Gitanyow Lax'yip has not been extinguished.
10. The Gitanyow are organized by a clan and house system which is the foundation of Gitanyow Ayookxw and social organization. The Gitanyow are divided into two Pdeek (clans): Lax Gibuu (wolf) and Lax Ganeda (frog). These clans are further organized into eight Wilp, 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 Gitanyow clan and house system is the organizational structure by which the Gitanyow occupy, use and own, and have occupied, used and owned, the Gitanyow Lax'yip.
12. The Gitanyow and their ancestors have 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, the Gitanyow and their ancestors exclusively occupied, effectively controlled and regularly used the Gitanyow Lax'yip by particulars of this use and occupation includes 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 ("Liligit"), which affirms the Daxyget and Ayookw;
  - 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 Liligit, regalia, Adaawk, limx' ooy, Ayuuk, and Gitm'gan;
  - 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;

- a. ~~continuing Gitanyow social organization, which is based upon the relationship of the Gitanyow to the Gitanyow Lax'yip;~~
- b. ~~exercising Gitanyow spiritual beliefs within the Gitanyow Lax'yip and maintaining their spiritual relationships with the beings and the spirits of the earth, the forests, the waters and the sky;~~
- c. ~~living within and managing the human uses of Gitanyow Lax'yip, and regularly utilizing, conserving and protecting the terrestrial and inland waters and riverine ecosystems to assure the well-being of present and future generations, in accordance with Gitanyow Ayookkw, customs, practices and traditions;~~
- d. ~~establishing trade relationships with other Indigenous peoples, and domestic and international trading entities;~~
- e. ~~governing themselves and non Gitanyow according to Gitanyow Ayookkw;~~
- f. ~~maintaining the Gitanyow political, legal and cultural institutions and exercising Gitanyow authority over the Gitanyow Lax'yip through those institutions;~~
- g. ~~protecting and maintaining the boundaries of the Gitanyow Lax'yip;~~
- h. ~~expressing and confirming Gitanyow ownership of the Gitanyow Lax'yip through their regalia, Adaa'wk, limx'oo'y, Ayuuk, and Gim'gan;~~
- i. ~~asserting Gitanyow ownership of the Gitanyow Lax'yip;~~
- j. ~~confirming, expressing and publicizing Gitanyow ownership of the Gitanyow Lax'yip through the raising of the Git'mgan and through the feast system ("Lhig'it");~~
- k. ~~governing the Gitanyow Lax'yip by maintaining institutions and Ayookkw related to lands and resources, including Ayookkw related to access and trespass which were enforced by the Gitanyow;~~
- l. ~~exercising Gitanyow culture based upon their relationship to the land and the spirits of Gitanyow Lax'yip;~~
- m. ~~using, harvesting, managing and conserving fish and other aquatic species from the sea and the inland waters of the Gitanyow Lax'yip for cultural, domestic and livelihood purposes;~~
- n. ~~using, harvesting, managing and conserving trees, including old growth cedar from the Gitanyow Lax'yip for cultural, domestic and livelihood purposes;~~

- ~~o. using, harvesting, managing and conserving fauna from the Gitanyow Lax'yip for cultural, domestic and livelihood purposes;~~
  - ~~p. using, harvesting, managing and conserving berries, plants and medicines from the Gitanyow Lax'yip for cultural, domestic and livelihood purposes;~~
  - ~~q. trading animals and their by products, fish and other aquatic species and their by products harvested from the Gitanyow Lax'yip, for commercial purposes;~~
  - ~~r. trading products from forest resources, including trees, berries plants and medicines harvested from the Gitanyow Lax'yip, for commercial purposes; and~~
  - ~~s. managing and conserving the terrestrial and inland waters and riverine ecosystems, in accordance with Gitanyow Ayookxw, customs, practices and traditions.~~
13. 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 paragraphs 12 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.
14. The Gitanyow have resisted colonization, and have disputed 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 formally served notice to the Defendants 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 .
15. No treaty has ever been concluded between the Crown and the Gitanyow. The aboriginal title of the Plaintiffs has not been extinguished and cannot be extinguished by the Crown without Gitanyow consent.
  16. No part of the Gitanyow Lax'yip was ever surrendered or ceded by the Gitanyow to the Crown at any time.
  17. Aboriginal title over the Gitanyow Lax'yip was at all material times a right enjoyed by the Gitanyow.
  18. The Gitanyow had and continue to have the right to enforce their aboriginal title as against other aboriginal and non-aboriginal peoples.
  19. The Gitanyow never ceased to assert their aboriginal title and right of possession over the Gitanyow Lax'yip in accordance with Gitanyow Ayookxw and practices.

**C. Crown Recognition of Aboriginal Title**

20. 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 7<sup>th</sup> of October, 1763 (thereinafter called the "Royal Proclamation").
21. 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 the King ~~Queen~~ in Right of Canada (herein referred to as "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.
22. 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.

23. 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.

**D. Wrongful Conduct of the Defendants**

24. On the assumption that they had and have a right of exclusive control of the Gitanyow Lax'yip, the Defendants acted and continue to act beyond their constitutional powers.
25. 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 interfered with the Gitanyow's exercise and enjoyment of their rights.
26. 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 royalties, stumpage, revenue 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*.
27. 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.

28. The Defendants have trespassed and committed nuisance by issuing Tenures which 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.
29. 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.
- 30. The Defendants' unlawful conduct constitutes breach of trust and breach of the fiduciary duty owed to the Plaintiffs.
- 31. As a result of the Defendants' unlawful conduct described above, the Plaintiffs have suffered loss and damages, including but not limited to:
  - a. cultural and social losses;
  - b. loss of use and enjoyment of the Gitanyow Lax'yip;
  - c. loss of revenue and economic benefit and opportunity from the Gitanyow Lax'yip; and
  - d. environmental damages including loss of biological diversity and degradation of terrestrial, freshwater and riverine ecosystems of the Gitanyow Lax'yip.
- 32. The Defendants received Benefits thereby unjustly enriching themselves and causing the Plaintiffs to suffer losses and damages.
- 33. 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**

- 1. A declaration recognizing the Plaintiffs' existing aboriginal title and rights in and to the Gitanyow Lax'yip which are existing aboriginal rights within the meaning of section 35 of the *Constitution Act, 1982*.
- 2. 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.

3. A declaration that the Plaintiffs aboriginal title and 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.
4. A declaration that the Plaintiffs' aboriginal title and rights include the right to ratify conditionally or otherwise refuse to ratify fee simple titles, Tenures or any rights or interests created or purported to be created directly or indirectly, at any time by either of the Defendants in relation to the Gitanyow Lax'yip or the resources thereof, including but not limited to those granted or purported to be granted to other aboriginal nations or portions of other aboriginal nations without the Plaintiffs' consent.
5. A declaration that the Plaintiffs' aboriginal title constitutes a burden on Crown title within the meaning of section 109 of the *Constitution Act, 1867*.
6. A declaration that the Defendants, or either of them, have unlawfully and unjustifiably infringed upon the Plaintiffs' aboriginal rights and title.
7. A declaration that the Defendants, or either of them, have trespassed on the Gitanyow Lax'yip or authorized others to do so without Gitanyow consent.
8. A declaration that the Defendants, or either of them, have wrongfully interfered with the Plaintiffs' aboriginal title and rights.
9. A declaration that the Defendants, or either of them, have committed nuisance by unlawfully interfering with the Plaintiffs' use and enjoyment of the Gitanyow Lax'yip.
10. A declaration that the Defendants have breached their fiduciary duty owed to the Plaintiffs with respect to the Gitanyow Lax'yip.
11. 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.

12. Interlocutory and permanent injunctive relief to prevent further or new interference with the Plaintiffs' aboriginal title and rights in and to the Gitanyow Lax'yip, including but not limited to:
  - a. An interlocutory and permanent injunction prohibiting the appropriation by the Defendants of any part of the Gitanyow Lax'yip or the granting to third parties of any rights or interests in relation thereto, through grants, licences, leases, authorizations, approvals and permits or in any other manner whatsoever which may infringe on the Plaintiffs' aboriginal title or rights without the Plaintiffs' consent; and
  - b. An interlocutory and permanent injunction prohibiting the Defendants from issuing or renewing any grants, licences, leases, authorizations, approvals and permits authorizing the use of any resources within the Gitanyow Lax'yip by the Defendants, their agents or by third parties which may infringe on the Plaintiffs' aboriginal title or rights without the Plaintiffs' consent.
13. A declaration that the Plaintiffs are entitled to damages 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.
14. Further, or in the alternative:
  - a. 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;

- b. 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*;
  - c. an order for an accounting; and
  - d. an order that the Defendants disgorge to the Plaintiffs the Benefits received by them in relation to the Gitanyow Lax'yip.
- 15. An Order for general, aggravated and punitive damages.
- 16. Pre-judgment and post-judgment interest according to the *Court Order Interest Act*, and its predecessor legislation.
- 17. An order that this Honourable Court shall retain jurisdiction to resolve all outstanding disputes between the parties as to the implementation of the Declarations and Orders of this Honourable Court.
- 18. The costs of this action.
- 19. Such further and other relief as this Honourable Court may deem just.

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

- 1. The facts set out above establish that:
  - a. The Gitanyow hold aboriginal title to Gitanyow Lax'yip;
  - b. The Gitanyow also hold aboriginal rights within and in relation to the Gitanyow Lax'yip, including:
    - i. 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;
    - ii. 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;
    - iii. the right to harvest timber for social and ceremonial purposes and to trade timber and timber by-products on a commercial basis;
    - iv. 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;

- v. the right to manage the land and the resources thereon in accordance with Gitanyow laws;
  - vi. the right to govern themselves in accordance with Gitanyow laws; and
  - vii. the right to carry out their cultural, social and spiritual practices.
- 2. The granting of the Tenures and the other actions of the Defendants 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.
- 3. These are unjustifiable infringements of Plaintiffs' aboriginal title and aboriginal rights and 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*.
- 4. 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.
- 5. An interim and permanent injunction is warranted to prevent the granting of further Tenures without the consent of the Gitanyow and to prevent further damage and infringement of the Gitanyow's aboriginal title and rights.
- 6. 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.
- 7. 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.

8. UNDRIP is a statement of conventional International law as it has been recognized at the time of the approval of UNDRIP.
9. The Plaintiffs, as a distinct people, have the right of self-determination within the Gitanyow Lax'yip in accordance with international law, including UNDRIP.
10. The laws of the Province of British Columbia are subject to the reservation of aboriginal title by the Gitanyow.

Plaintiffs' address for service:

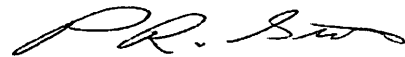
Peter Grant Law  
Box 12137  
#407 – 808 Nelson Street  
Vancouver, B.C.  
V6Z 2H2

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

Place of trial: Vancouver, British Columbia

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

Date: ~~August 19, 2022~~ May 19, 2023



Signature of  
[ ] plaintiff [X] lawyer for plaintiffs  
Peter R. Grant

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