

Amended Pursuant to the Order of Madam  
Justice Brown dated January 8, 2010



No. 15150  
Smithers Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SPOOKW ALSO KNOWN AS GERI McDOUGALL on behalf of herself and other  
Gitxsan Chiefs and members, BASKYALAXHA ALSO KNOWN AS WILLIAM  
BLACKWATER SR, SUU DII ALSO KNOWN AS YVONNE LATTIE,  
LUUTKUDZIIWUUS ALSO KNOWN AS CHARLIE WRIGHT, XSIMWITS, IIN  
ALSO KNOWN AS LESTER MOORE, MOOLXHAN ALSO KNOWN AS 'NOOLA,  
AND AS NORMAN MOORE, GITANMAAX INDIAN BAND, GLEN VOWELL  
INDIAN BAND, GITWANGAK INDIAN BAND, KISPIOX INDIAN BAND, and  
GITKSAN LOCAL SERVICES SOCIETY

PLAINTIFFS

AND:

GITXSAN TREATY SOCIETY, BRITISH COLUMBIA TREATY COMMISSION,  
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH  
COLUMBIA AND THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

**FRESH AMENDED STATEMENT OF CLAIM**

THE PARTIES

1. The Plaintiff, Gitanmaax Indian Band is a Gitxsan community with a population of 2,123 registered members, having five reserves totalling 2,346 hectares that are held for the use and benefit of registered band members. Gitanmaax band members elect a Band Council under section 74 of the *Indian Act* (R.S., 1985, C.1-5) to act as their elected government, to administer band owned assets including land, monies, and community infrastructure; and provide a wide variety of social, economic, education and community programs and services to its members. Gitanmaax Indian Band Council conducts business from an administrative office located on Gitanmaax Indian Reserve at Hazelton, B.C.

2. The Plaintiff, Glen Vowell Indian Band is a Gitxsan community with a population of 388 registered members, having one reserve totalling 512 hectares that is held for the use and benefit of registered band members. Glen Vowell band members elect a Band Council under section 74 of the *Indian Act* to act as their elected government, to administer band owned assets including land, monies, and community infrastructure, and provide a wide variety of social, economic, education and community

programs and services to its members. Glen Vowell Indian Band Council conducts business from an administrative office located on Sik-E-Dahk Indian Reserve at Glen Vowell, B.C.

3. The Plaintiff, Gitwangak Indian Band is a Gitksan community with a population of 1,115 registered members, having eight reserves totalling 1,562 hectares that are held for the use and benefit of registered band members. Gitwangak band members elect a Band Council under section 74 of the *Indian Act* to act as their elected government, to administer band owned assets including land, monies, and community infrastructure, and provide a wide variety of social, economic, education and community programs and services to its members. Gitwangak Indian Band Council normally conducts business from an administrative office located on Gitwangak Indian Reserve at Gitwangak, B.C., under third party management by Gitksan Local Services Society.

4. The Plaintiff, Kispiox Indian Band is a Gitksan community with a population of 1,456 registered members, having ten reserves totalling 1,685 hectares that are held for the use and benefit of registered band members. Kispiox band members elect a Band Council under section 74 of the *Indian Act* to act as their elected government, to administer band owned assets including land, monies, and community infrastructure, and provide a wide variety of social, economic, education and community programs and services to its members. Kispiox Indian Band Council conducts business from an administrative office located on Kispiox Indian Reserve at Kispiox, B.C.

5. The Plaintiff, Gitksan Local Service Society, known as the Gitksan Government Commission ("GGC") is a duly incorporated non-profit society established under the British Columbia Society Act in 1983. The Board of Directors of the GGC are Chief Councillors of member bands, specifically: Gitanmaax, Glen Vowell, Kispiox, Gitwangak, and Gitanyow. The GGC has an administrative office at Gitanmaax, 4125 River Road, Hazelton, B.C.

6. The Plaintiff, Baskyalaxha, also known as William Blackwater Sr. is a Gitksan Hereditary Chief and is responsible for his Wilp.

7. The Plaintiff, Suu Dii, also known as Yvonne Lattie, is a Gitksan Hereditary Chief and is responsible for her Wilp.

8. The Plaintiff, Luutkudziiwuus, also known as Charlie Wright, is a Wing Chief and member of the Wilp of Xsimwits,iin.

9. The Plaintiff, Xsimwits,iin, also known as Lester Moore, is a Gitksan Hereditary Chief and is responsible for his Wilp.

10. The Plaintiff, Moolxhan, also known as Noola and as Norman Moore, is a Gitksan Hereditary Chief and is responsible for his Wilp.

11. The Plaintiff, Spookw is a Gitksan Hereditary Chief, and represents herself, as well as other Gitksan Chiefs, matriarchs and members of other Gitksan houses who have signed a declaration opposing the conduct of treaty negotiations by the Defendant, Gitksan Treaty Society (the "Declaration").

12. The Defendant, Gitxsan Treaty Society ("GTS") is a non-profit society duly incorporated on November 28, 1994 under the *British Columbia Society Act*, Incorporation no. S-0032824 and purports to represent 62 Gitxsan Hereditary Chiefs in treaty negotiations with British Columbia and Canada. GTS has 26 registered members comprised of the original-founding members of the GTS and current Board of Directors. GTS has its registered Office at P.O. Box 229, Hazelton, B.C.

13. The Defendant, British Columbia Treaty Commission ("BCTC") is a Commission established pursuant to the *British Columbia Treaty Commission Act* (1995, c, 45), (the "Act") an Act of the Legislature of British Columbia and a resolution of the First Nations Summit, to facilitate treaty negotiations between Canada, B.C. and First Nations. BCTC has its registered office at 203 – 1155 West Pender Street, Vancouver, B.C., V6E 2P4.

14. The Defendant, the Queen in Right of British Columbia as represented by the Attorney General of B.C. ("the Province") funds and participates in treaty negotiations with the GTS and other First Nations and has an address for service at the Parliament Buildings – Room 234, PO Box 9044, Stn Provincial Government, Victoria, B.C. V8W 9J7.

15. The Defendant, the Queen in Right of Canada, as represented by the Attorney General of Canada, ("Canada") holds lands for the use and benefit of the Plaintiff Indian Bands and band members funds Band governments; and also funds and participates in treaty negotiations with the GTS and other First Nations; and has an address for service at 284 Wellington Street, Ottawa, ON, K1A 0H8.

#### GITXSAN PEOPLE

16. The Gitxsan Nation is comprised of traditional Houses also known as Wilps which are the basic Gitxsan social unit. Presently the Gitxsan live in six Gitxsan communities: Gitwangak, Gitanyow, Gitsegukla, Gitanmaax, Kispiox, and Glen Vowell. These Gitxsan communities are located primarily on the Skeena River and its tributaries above Kitselas Canyon. Gitwangak is the most western Gitxsan village, being the lowest on the Skeena River, at approximately 240 kilometers (150 miles) from the coast. Gitanyow, the second most westerly Gitxsan village, is between 22-24 kilometers (14-15 miles) from Gitwangak north on the Kitwancool River. In continuation, close to a small canyon, Gitsegukla is located between Gitwangak and Gitanmaax on the Skeena River. Gitanmaax is position at the confluence of the Skeena and Bulkley Rivers at an estimated 264 kilometers (165 miles) from the coast. The village of Kispiox is located an approximately 32 kilometers (20 miles) from Gitanmaax at the confluence of the Kispiox and Skeena Rivers. The village of Glen Vowell was recently established in the past one hundred years. It is located between Kispiox and Gitanmaax on the Skeena River. Some, but not all, Gitxsan Indian Band members are also Wilp members

17. Each Wilp is made up of related families with a House chief, wing chief(s) and members who own adaakw and rights and prerogatives. Each House owns a series of names that are passed down from generation to generation within a closely connected family group. A family's set of names includes Chief names, which are ranked as head chief and Wing Chiefs. On the death of a Chief, the remaining ranked Chiefs and matriarchs select a new Chief as the successor. The successor formalized the taking of

the name within the Feast Hall in front of witnesses. The succession of the new chief carries with it the name, regalia, territory and authority of the old chief.

18. Each Wilp has its own territory within Gitxsan traditional territory. Gitxsan Hereditary Chiefs have authority and are responsible for making decisions and protecting their House members' interests and rights and managing and negotiating their House's traditional lands and resources. Each Wilp is autonomous and follow the ayookw. Under Gitxsan law, no Hereditary Chief has authority to make decisions or to speak to another Wilp's interests or rights. The Plaintiff Gitxsan Hereditary Chiefs assert aboriginal rights and title to territory that they hold for their respective Wilp.

#### GTS MANDATE

19. GTS's purpose is to support the Gitxsan people in their treaty negotiations and other negotiations and in other initiatives. The Gitxsan people expected that the GTS would act to advance the interests of all Gitxsan with their informed consent, and according to the ayookw and the traditional governance system, as pleaded herein

20. GTS created a forum called Gimlitzwit comprised of Gitxsan Hereditary Chiefs. The GTS describes the Gimlitzwit as a forum where approximately 60 Hereditary Chiefs make decisions and give directions to the GTS regarding the rights and title of Gitxsan people.

#### TREATY NEGOTIATIONS

21. Purporting to act on behalf of all Gitxsan people, GTS entered into the BCTC treaty process on July 15, 1994 by the filing of a Statement of Intent with the Defendant, BCTC to negotiate a treaty.

22. Since then, GTS has received loan funding from the Defendants, Province and Canada for the conduct of treaty negotiations. Gitxsan people to not have any knowledge of the conditions of funding. GTS is currently at Stage 4 of a 6 stage treaty process and is negotiating an Agreement in Principle ("AIP").

23. As of March 31, 2008, GTS reported that the loan from the Defendants, Province and Canada for treaty negotiations totaled \$15,643,431.00. The amount has increased and continues to increase by approximately \$1.8 million dollars each year.

24. Over the years GTS has unduly restricted the involvement of the plaintiff Hereditary Chiefs and denied them access to information about the treaty negotiations. GTS has also acted to exclude certain Gitxsan Hereditary Chiefs from attending or participating in the meetings held to give GTS directions, and has recognized other persons who do not hold the chief names as having authority to make decisions about Wilp rights and territories contrary to the ayookw.

25. GTS has also unduly restricted the involvement of the plaintiff Indian Bands and denied them access to information about treaty negotiations.

26. Acting further to their fiduciary duty to protect the individual and collective rights held by registered band members under the *Indian Act*, in 2003 the Gitanmaax Indian Band held a referendum of all registered Band members on whether the members

supported GTS' conduct of treaty negotiations ("the Referendum"). Over two thirds (66%) stated they did not want the GTS to represent them in treaty negotiations.

### **Short Term Forestry Agreement**

27. GTS has been recognized by Canada and the Province and by business/industries as the entity which represents all Gitksan people in consultations regarding their aboriginal rights and title. In particular, the GTS, purporting to represent all Gitksan people, negotiated with the Province, a Short Term Forestry Agreement (STFA) which was signed on August 4, 2006. Under the STFA, the Province provides \$500 per capita annually to GTS, with such funds to be used for the benefit of the Gitksan people. Per capita funding under the STFA is based on the membership of Gitksan Indian Bands, including the Plaintiff Bands. The GTS is to hold and administer these funds for the use and benefit of Gitksan people.

28. Over the years GTS has unduly restricted the involvement of the plaintiff Hereditary Chiefs and denied them access to information about the STFA. GTS has also acted to exclude certain Gitksan Hereditary Chiefs from attending or participating in the meetings held to give GTS directions, and has recognized other persons who do not hold the chief names to make decisions about Wilp rights and territories contrary to the ayookw. GTS also used payments to secure approval by the Hereditary Chiefs of the STFA, contrary to the ayookw.

29. GTS has also unduly restricted the involvement of the plaintiff Indian Bands and denied them access to information about the STFA.

30. Gitksan Hereditary Chiefs, Gitksan people and Indian Band Councils have opposed these actions and expressed their opposition to the GTS's conduct of treaty negotiations and to the STFA.

### **GITKSAN ALTERNATIVE GOVERNANCE MODEL**

31. In May 2008, without the knowledge of or notice to the plaintiff Hereditary Chiefs or Indian Band Councils, and without their direction or consent, the GTS tabled a document, the Gitksan Alternative Governance Model ("GAGM") with the Province and Canada in the BCTC treaty process. The GAGM proposes terms of a treaty which will severely impact aboriginal and other rights and obligations of all Gitksan Hereditary Chiefs and House members, registered Gitksan Band members, Band Councils, the GGC as well as land holders on Indian reserve land. Amongst the proposed terms of a treaty, the GAGM would eliminate reserve lands established under the *Indian Act*. Indian Bands and governments would also be eliminated.

32. In July 2008, Gitksan members, including the Plaintiff, Hereditary Chiefs and Gitksan Indian Band Councils, first became aware of the GAGM through national, regional and local newspaper advertisements, and by advertisements on national television.

### **REQUESTS TO CEASE NEGOTIATIONS**

33. In July and September 2008, the GGC hosted informational sessions for all Gitksan about the GAGM, at which time Gitksan Chiefs, matriarchs and House

members expressed opposition to the treaty negotiations and to the GAGM, including by signing the Declaration opposing the conduct of treaty negotiations by the GTS.

34. On August 15, 2008, GGC formally called on the GTS to cease any further negotiations based on the GAGM until Gitxsan people had an opportunity to become fully informed on the proposed terms of the treaty and to give direction to GTS. GTS declined to do so and stated they will conduct business "as usual".

35. On September 11, 2008, the Plaintiff, GGC called on the Defendants, Province and Canada and BCTC to cease negotiating with GTS until such time as Gitxsan concerns regarding the GAGM and the GTS mandate were addressed. On this date the Defendants were provided with Band Council Resolutions passed at duly convened Band Council meetings, wherein the Band Councils of the plaintiff Indian Bands expressed their opposition to the GAGM and to the conduct of negotiations.

36. On September 15, 2008, the GGC formally requested the GTS Board of Directors to respect the wishes of the Gitxsan people by resigning from their positions as board members. They did not acknowledge or accede to the request.

37. On September 22, 2008 a Gitxsan Women's Rally was held where Gitxsan women voiced their concerns about the Gitxsan Alternative Governance Model (GAGM).

38. At an annual gathering of the Gitxsan people ("the Summit") on October 22, 23 and 24, 2008 hosted by GTS for the purpose of reviewing and approving the GTS mandate, GTS refused to permit Hereditary Chiefs to conduct debate on GTS governance, finances, or use of the STFA funds that the GTS administers for the use and benefit of Gitxsan people.

39. The Defendants continue to provide and receive loan funding and to negotiate the AIP on the basis of the GAGM without providing information about or giving appropriate consideration to the Plaintiffs' views and over their objections.

40. The Defendant, GTS continues to receive funds under the STFA and to administer and disburse STFA funds without providing the plaintiffs with information about or access to funds related thereto or giving appropriate consideration to the Plaintiffs' views and over their objections.

#### **FIDUCIARY DUTY AND DUTY OF HONOUR**

41. The Defendants, Canada and the Province have a special duty to aboriginal peoples in the conduct of treaty negotiations. The Crown's duty requires, among other things, that negotiations be conducted honourably, according to the principles of natural justice, and giving appropriate consideration to the aboriginal peoples' views. In particular, the Crown's duty requires that rights held by First Nations not be the subject of treaty negotiations unless the affected members consent to be represented in the negotiations and that they consent to the incurring of related loan debt in respect thereof.

42. As a consequence of the facts set out herein, and in particular in paragraphs 26, 35, 39, 40 herein, the Defendants, Canada and Province have breached the duty of honour owed to the Plaintiffs in the conduct of treaty negotiations.

43. The Defendant, Canada owes a fiduciary obligation to the plaintiff Indian Bands pursuant to section 35 of the *Constitution Act*, 1982 and the *Indian Act*. In the context of their relationship under the *Indian Act*, and in the circumstances where they are excluded from being represented in the treaty negotiations, and have expressly advised Canada of their opposition as pleaded herein, the Plaintiffs are subject to a particular vulnerability in the exercise of Canada's discretion and power over their reserve lands and their continued existence as Indian Bands. In these circumstances, Canada has a duty to exercise proper diligence concerning reserve lands and their existence as Indian Bands.

44. As a consequence of the facts set out herein, and in particular in paragraphs 26, 35, 39, 40 herein, the Defendant Canada has and continues to breach the fiduciary duty owed to them in respect of reserve lands and their existence as Indian Bands.

#### OPPRESSIVE AND PREJUDICIAL CONDUCT

45. The plaintiffs are proper persons to seek relief under s. 71 of *The Society Act*, R.S.B.C. 1996 c. 433 and Part 9 of the *Company Act*, R.S.B.C. 1996. The Defendant, GTS has conducted and continues to conduct its affairs in a fashion that is oppressive and unfairly prejudicial to the Plaintiffs by:

##### *Plaintiff Hereditary Chiefs*

- (a) failing to provide notice of and refusing entry to certain Gitxsan Hereditary Chiefs to GTS meetings purportedly held for all Gitxsan Hereditary Chiefs concerning aboriginal title and rights and thereby subverting the Gitxsan traditional governance system and infringing the rights of Gitxsan Hereditary Chiefs under the ayookw; and
- (b) discriminating against certain Gitxsan Hereditary Chiefs by unreasonably withholding travel funding from them to attend GTS meetings purportedly held for all Gitxsan Hereditary Chiefs and thereby subverting the Gitxsan traditional governance system and infringing the rights of Gitxsan Hereditary Chiefs under the ayookw; and
- (c) failing to provide full and transparent information and reports on activities and finances of GTS to the plaintiff Hereditary Chiefs and thereby subverting the Gitxsan traditional governance system and infringing the rights of Gitxsan Hereditary Chiefs under the ayookw; and
- (d) refusing to allow Gitxsan Hereditary Chiefs to debate on GTS activities, agreements and finances thereby subverting the Gitxsan traditional governance system and infringing the rights of Gitxsan Hereditary Chiefs under the ayookw; and

- (e) refusing to take direction from Gitxsan Hereditary Chiefs and thereby subverting the Gitxsan traditional governance system and infringing the rights of Gitxsan Hereditary Chiefs under the ayookw; and
- (f) recognizing persons who do not hold the Chief names as having decision making authority and using payments to secure approvals as pleaded herein and thereby subverting the Gitxsan traditional governance system and infringing the rights of Gitxsan Hereditary Chiefs under the ayookw; and
- (g) failing to comply with the GTS Constitution and Bylaws and the *Society Act*;

*Plaintiff Indian Bands and GGC*

- (h) failing to provide full and transparent information and reports to the plaintiff Indian Band Councils and GGC on activities and finances of GTS; and
- (i) refusing to acknowledge or to consult with the plaintiff Indian Band Councils and GGC on matters affecting them and under their responsibility and authority in connection with the negotiation of the treaty; and;
- (j) restricting the involvement of the plaintiff Indian Bands and denying the plaintiff Indian Band Councils access to information and funds related to the STFA; and

*All plaintiffs*

- (k) generally carrying on business in a manner, which is both secretive and arbitrary, and without the knowledge or consent of the Plaintiffs.

**NEGLIGENCE AND TORT**

46. The Defendant, BCTC owes a duty of care to the Plaintiffs under the Act by virtue of the fact that BCTC is responsible for ensuring and approving the Gitxsan peoples' readiness to negotiate in the BCTC process and for ensuring an ongoing negotiation mandate and for allocating funds in accordance with criteria agreed to by the principals.

47. For years the Defendant, BCTC has been aware that the Plaintiffs do not agree that GTS represent them in the treaty negotiations and that the GTS does not have a valid mandate and that the loan amount was increasing.

48. The Defendant, BCTC breached the duty of care owed to the Plaintiffs in that BCTC failed to meet the standard of care required of a reasonable and prudent facilitator of a treaty process between the Crown and First Nations including, but not limited to, failing to ensure that GTS has a valid mandate and is representative and

accountable to Gitxsan people and failing to exercise due care and diligence in loaning funds to the Defendant GTS while continuing to allow negotiations to continue and the loan amount to increase as a result of which the plaintiffs have suffered injury and loss.

49. The Plaintiff, GGC has the mandate to deliver programs and services formerly delivered by Indian and Northern Affairs Canada. Further to this mandate, since 1986, GGC and the plaintiff Indian Bands have entered into various agreements with Canada and with third parties for the delivery of programs and services.

50. With knowledge of these agreements, further to the terms of the GAGM, the Defendants Canada, Province and GTS, propose to terminate these agreements entered into by GGC and the Plaintiff Indian Bands for the delivery of programs and services. The Defendants' actions in negotiating a treaty on the basis that these contracts will be wrongfully terminated without the consent of the GGC and Plaintiff Indian Bands represents intentional interference with existing contractual relations of the Plaintiff Indian Bands and the GGC, as between themselves and third parties. The actions of the Defendants will result in the Plaintiffs losing the benefit of the contracts and being liable to pay damages to third parties and to suffer loss and damage.

51. The Plaintiffs will rely on:

- (i) Sections 71 and 85 of the *Society Act* R.S.B.C. 1996 c. 433; and
- (ii) Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253

## WHEREFORE

### The Plaintiffs claim as follows:

2. A declaration that the Defendants, Canada and the Province are in breach of their fiduciary duty and duty of honour to the Plaintiffs by:
  1. continuing to conduct treaty negotiations with GTS after receiving notice that the Plaintiff Hereditary Chiefs do not consent to be represented by GTS in the negotiations and that GTS is not properly mandated by Gitxsan people.
  2. continuing to conduct treaty negotiations with GTS after receiving notice that the Plaintiff Indian Bands do not consent to be represented by GTS in the negotiations affecting matters within their legal authority, specifically band membership, individual interests in reserve lands, lands held in common under the *Indian Act* and elections of a representative First Nations government.
  3. providing loans or permitting the defendant BCTC to provide loans which the Plaintiffs may be liable for in the future, when such loans have been

made without their informed consent and when negotiations enabled by said loans are conducted in a secretive and oppressive manner.

3. An order appointing a liquidator to wind up the affairs of the GTS and to distribute its assets.
4. In the alternative, a declaration that the affairs of GTS are and have been conducted in a manner oppressive and prejudicial to the Plaintiffs
5. In the further alternative, an order that GTS's constitution and bylaws be amended to ensure accountable and informed representation of all Gitxsan people and communities.
6. An interim order or interlocutory and permanent injunction enjoining the Defendants from advancing or receiving further treaty loan funds and from continuing to negotiate a treaty.
7. An interim order or interlocutory and permanent injunction enjoining the Defendants, Province, Canada and GTS from negotiating or entering into further consultation and accommodation agreements.
8. Damages
9. Costs of this action, and;
10. Such further and other relief as this Honourable Court may deem just.

PLACE OF TRIAL: Smithers, British Columbia

DATED: December 2, 2008

AMENDED: March 5, 2010

Cynthia Joseph  
Cynthia M. Joseph  
Solicitor for the Plaintiffs *per MLH*