



Court File No. **VLC-S-S-238484**

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHIEF MARILYN SLETT and HEMAS HARVEY HUMCHITT
on their own behalf and on behalf of all members of
HEILTSUK NATION

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the 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 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 Plaintiffs

1. Heiltsuk Nation (Haítzaqv) is a nation of Indigenous people, an “aboriginal peoples of Canada” within the meaning of subsection 35(2) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11, and a “band” within the meaning of subsection 2(1) of the *Indian Act*, RSC 1985, c I-5.
2. Since time immemorial, including prior to the date of first contact with Europeans (“**Contact**”), the ancestors of the present day Heiltsuk Nation have existed and belonged to an organized collective of Haítzaqv|a-speaking peoples bound by a shared language, culture, history, laws, customs, practices, traditions and spiritual beliefs, and have occupied a territory in an area within what is now known as the Central Coast of British Columbia (“**Heiltsuk Territory**”).
3. The present-day members of Heiltsuk Nation are descendants and successors of the pre-Contact members of Heiltsuk Nation.
4. The plaintiff Chief Marilyn Slett is a member of Heiltsuk Nation and the elected chief of Heiltsuk Nation under the *Indian Act*.
5. The plaintiff Hemas Harvey Humchitt is a member of Heiltsuk Nation and a hereditary chief (hemas) of Heiltsuk Nation under its laws and traditions.
6. The Heiltsuk Nation community of Bella Bella is the largest present-day community within Heiltsuk Territory and on the Central Coast of British Columbia. Bella Bella is a remote community located about 200 km north of Port Hardy and is only accessible by air and water.

B. The Defendant

7. The defendant the Attorney General of Canada represents Her Majesty the Queen in Right of Canada for the purposes of defending legal proceedings pursuant to subsection 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

C. The Plaintiffs' Herring Management and Harvesting Rights

8. Since time immemorial, including prior to the date of Contact and continuing to the present day, Heiltsuk Nation members have protected, conserved and sustainably managed Pacific herring (*Clupea pallasii*) in Heiltsuk Territory in accordance with Heiltsuk law (Gwi'ilas), which activity has been, since time immemorial and continuing to the present day, a sacred teaching, practice, custom and tradition integral to Heiltsuk Nation's distinctive culture (the "**Heiltsuk Herring Management Right**").
9. Since time immemorial, including prior to the date of Contact and continuing to the present day, Heiltsuk Nation members have harvested the spawn of Pacific herring deposited on kelp ("**SOK**") in Heiltsuk Territory for trade and commerce in accordance with Heiltsuk law, which activity has been, since time immemorial and continuing to the present day, a sacred teaching, practice, custom and tradition integral to Heiltsuk Nation's distinctive culture (the "**Heiltsuk Herring Commercial Harvest Right**").
10. The marine portion of Heiltsuk Territory within which Heiltsuk Nation has exercised and continues to exercise the Heiltsuk Herring Management Right and the Heiltsuk Herring Commercial Harvest Right includes part of management areas 6, 7, 8 and 9 as defined in the *Pacific Fishery Management Area Regulations, 2007* (SOR/2007-77).
11. The exercise of the Heiltsuk Herring Commercial Harvest Right provides economic opportunities and livelihoods for many Heiltsuk Nation members, which is critically important to the community given the remote location of Bella Bella and the limited economic opportunities in the area.

D. The Defendant's Asserted Legislative Jurisdiction over Fisheries

12. Relying on the assumption of Crown sovereignty, Canada asserts and exercises legislative jurisdiction over "Sea Coast and Inland Fisheries" pursuant to subsection 91(12) of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.
13. The legislation under which Canada primarily asserts and exercises its asserted legislative jurisdiction over "Sea Coast and Inland Fisheries" is the *Fisheries Act*, RSC 1985, c F-14, as amended from time to time.
14. The Minister of Fisheries, Oceans and the Canadian Coast Guard (the "**Minister**") has statutory authority under the *Fisheries Act*, which authority is further defined by regulations enacted by the Governor in Council under that Act.

15. The Governor in Council has enacted various regulations pursuant to subsection 43(1) of the *Fisheries Act* that are relevant to the management of Pacific herring, including:
 - (a) *Aboriginal Communal Fishing Licenses Regulations*, SOR/93-332;
 - (b) *Fishery (General) Regulations*, SOR/93-53;
 - (c) *Pacific Fishery Regulations*, 1993, SOR/93-54; and
 - (d) *Pacific Fishery Management Area Regulations*, 2007, SOR/2007-77;(collectively, the “**Regulations**”).
16. Under the *Fisheries Act* and the Regulations, the Minister asserts and exercises legislative authority to manage marine fisheries in Heiltsuk Territory, including Pacific herring fisheries.

E. The Defendant’s Management of Pacific Herring

17. Under the *Fisheries Act* and the Regulations, fishing for Pacific herring in Heiltsuk Territory for commercial purposes is prohibited except to the extent that it is specifically authorized in accordance with the *Fisheries Act* and the Regulations.
18. The Minister, with the support and assistance of the Department of Fisheries and Oceans Canada (“**DFO**”), the department she oversees, purports to manage the Pacific herring fishery through multiple means including the issuance of licences specifying who may harvest Pacific herring or Pacific herring spawn, and issuing orders specifying where, when and by what means licence-holders may harvest Pacific herring or Pacific herring spawn for commercial and other purposes.
19. Heiltsuk Nation holds 13 communal commercial category “FJ” licences or equivalent licences authorizing the harvest of SOK in the Central Coast area for commercial purposes, which licences have an aggregate quota of 304,000 lbs of SOK that may be harvested per season.
20. When authorized, the commercial Pacific herring fishery in the Central Coast area, which includes Heiltsuk Territory, takes place in the spring of each year when Pacific herring spawn in that area.
21. On March 31, 2015, Heiltsuk Nation and DFO entered into an agreement in writing under which they agreed to jointly manage the Central Coast Pacific herring fishery for the 2016 season and subsequent seasons.
22. Since 2015, Heiltsuk Nation and DFO have cooperated in the development of a joint management plan for the Central Coast of British Columbia for each Pacific herring fishing season, beginning with the 2016 season.

23. For each Pacific herring season from 2016 to 2021, the Minister or her delegate approved and implemented the joint management plan for the Central Coast Pacific herring fishery that had been jointly developed by Heiltsuk Nation and DFO.

F. The 2022 Closure Decision

24. Between about August of 2021 and December of 2021, representatives of Heiltsuk Nation and DFO developed and agreed upon a joint management plan for the Central Coast of British Columbia for the 2022 Pacific herring season (the **"2022 Joint Management Plan"**).
25. The 2022 Joint Management Plan provided for the authorization of a commercial SOK fishery in the Central Coast area under which Heiltsuk Nation was to be permitted to harvest its quota of 304,000 lbs of SOK for commercial purposes.
26. On about December 3, 2021, DFO staff referred the 2022 Joint Management Plan to the Minister or her delegate for approval.
27. On about December 16, 2021, the Minister decided not to approve the 2022 Joint Management Plan and instead substituted her unilateral decision to close the commercial Pacific herring fishery in the Central Coast area in 2022 (the **"Closure Decision"**).
28. On February 17, 2022, DFO issued the final Integrated Fisheries Management Plan for Pacific herring for 2022, which provided for no commercial Pacific herring fishery in the Central Coast area in 2022 consistent with the Closure Decision.
29. As a result of the Closure Decision, Heiltsuk Nation and its members were unable to harvest SOK in 2022 for commercial purposes.
30. The Closure Decision interfered with, and resulted in a meaningful diminution of, the ability of Heiltsuk Nation to exercise the Heiltsuk Herring Management Right and the Heiltsuk Herring Commercial Harvest Right, including, without limitation, the ability of Heiltsuk Nation to:
 - (a) meet its sacred responsibilities to manage Pacific herring stocks in Heiltsuk Territory for the benefit of present and future generations;
 - (b) respect and honour spiritual and sacred connections to Heiltsuk Territory and Pacific herring;
 - (c) support a way of life and identity as practiced by Heiltsuk Nation ancestors since time immemorial and evolving to the present day;
 - (d) access and use available Pacific herring resources for the purpose of providing economic security;

- (e) support and maintain the physical, mental, emotional, and spiritual health and well-being of the Heiltsuk Nation community, including families, elders and children, through the conduct of the commercial SOK fishery and associated ceremonies and spiritual practices; and
 - (f) transmit customs and traditions to present and future generations of Heiltsuk Nation members.
31. The Closure Decision constituted an infringement of the Heiltsuk Herring Management Right and the Heiltsuk Herring Commercial Harvest Right.
32. The Closure Decision's interference with and infringement of the Heiltsuk Herring Management Right and the Heiltsuk Herring Commercial Harvest Right was not justified because:
- (a) the Closure Decision was not necessary to conserve Pacific herring stocks;
 - (b) the Closure Decision impairs the Heiltsuk Herring Management Right and the Heiltsuk Herring Commercial Harvest Right more than necessary to conserve Pacific herring stocks;
 - (c) no compensation was offered or paid to Heiltsuk Nation for the infringement of their rights and consequent loss of crucially important economic opportunities because of the Closure Decision; and
 - (d) to the extent that the Minister or DFO consulted with Heiltsuk Nation regarding the Closure Decision, that consultation was not meaningful, including because:
 - (i) it occurred after the Closure Decision;
 - (ii) it did not include discussion of the scientific basis for the Decision or any alternative approaches to the management of the 2022 commercial Pacific herring fishery in the Central Coast area such as limitations on commercial SOK access that might have reduced its impact on Pacific herring stocks while still enabling the meaningful exercise of the Heiltsuk Herring Management Right and the Heiltsuk Herring Commercial Harvest Right; and
 - (iii) neither the Minister nor DFO provided any accommodation to Heiltsuk Nation in relation to the serious economic impacts resulting from the infringements.
33. As a result of the Closure Decision, Heiltsuk Nation has suffered damage and loss, including:
- (a) loss of revenue from the sale of SOK;

- (b) loss of the benefit of economic activity generated by or ancillary to the harvest and sale of SOK;
- (c) loss of employment for Heiltsuk Nation SOK harvesters, SOK processing labourers and other Heiltsuk Nation members whose work depends directly or indirectly on the commercial SOK fishery;
- (d) loss of qualification for employment insurance benefits for Heiltsuk Nation SOK harvesters; and
- (e) harm to the health and well-being of Heiltsuk Nation members and the Heiltsuk Nation community.

Part 2: RELIEF SOUGHT

1. The plaintiffs seek the following relief against the defendant:
 - (a) an order declaring that Heiltsuk Nation has an Aboriginal right, within the meaning of subsection 35(1) of the *Constitution Act, 1982*, to protect, conserve and manage Pacific herring in Heiltsuk Territory;
 - (b) an order declaring that Heiltsuk Nation has an Aboriginal right, within the meaning of subsection 35(1) of the *Constitution Act, 1982*, to harvest SOK for commercial purposes in Heiltsuk Territory;
 - (c) an order declaring that the defendant unjustifiably infringed the Aboriginal rights of Heiltsuk Nation;
 - (d) an order declaring that the defendant breached its fiduciary duty to Heiltsuk Nation;
 - (e) an order declaring that the defendant failed to uphold the honour of the Crown in its conduct toward or affecting Heiltsuk Nation;
 - (f) damages;
 - (g) costs; and
 - (h) such further and other relief as this honourable court may deem just.

Part 3: LEGAL BASIS

1. The plaintiffs have and exercise existing Aboriginal rights to manage Pacific herring stocks and harvest SOK for commercial purposes, which Aboriginal rights are protected by subsection 35(1) of the *Constitution Act, 1982*.
2. The defendant unjustifiably infringed the plaintiffs' existing Aboriginal rights.

3. When infringing the plaintiffs' Aboriginal rights, the defendant owed a fiduciary duty to the plaintiffs as an Aboriginal people and was bound to uphold the honour of the Crown.
4. The defendant failed to uphold the honour of the Crown and breached its fiduciary duty to the plaintiffs by the defendant's infringement of the plaintiffs' Aboriginal rights.
5. The defendant's unjustified infringement of the plaintiffs' Aboriginal rights, failure to uphold the honour of the Crown and breach of the defendant's fiduciary duty to the plaintiffs has caused the plaintiffs to suffer loss and damage.

Plaintiffs' address for service: c/o 422 - 1080 Mainland Street
Vancouver, BC V6B 2T4

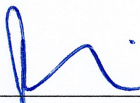
Fax number address for service (if any): 604.681.0959

E-mail address for service (if any): peter@mandellpinder.com

Place of trial: Vancouver, British Columbia

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

Date: December 14, 2023



Peter Millerd

Mandell Pinder LLP
Barristers and Solicitors
422 - 1080 Mainland Street
Vancouver, BC V6B 2T4
Tel.: 604.681.4146 Fax: 604.681.0959
Counsel for the plaintiffs

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:

In this claim the Heiltsuk Nation seeks recognition of its Aboriginal rights to manage Pacific herring and harvest Pacific herring spawn on kelp for commercial purposes within Heiltsuk Territory on the Central Coast of B.C., and seek remedies to address Canada's unjustifiable infringement of Heiltsuk Nation's Aboriginal rights.

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:

N/A