

NO. 051952
KAMLOOPS REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

CHIEF RON IGNACE and CHIEF SHANE GOTTFRIEDSON, on
their own behalf and on behalf of all other members of the
Stk'emlupsemc te Secwepemc of the SECWEPEMC NATION

PLAINTIFFS

AND

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA, KGHM AJAX MINING INC., and THE
ATTORNEY GENERAL OF CANADA

DEFENDANTS

REPLY

Filed by: The Plaintiffs

In reply to: The Response to Civil Claim filed on 16/Mar/2016 by the Defendant, the Attorney
General of Canada ("Canada")

1. In reply to Canada's Response, Part 3, paragraphs 1, and 5-7, the plaintiffs respond as follows:
 - (a) The material facts of the claim have been pled with sufficient particularity to define the issues and the nature of the infringements. Any further particulars are a matter of evidence;
 - (b) The Stk'emlupsemc te Secwepemc ("SSN") are the rightful caretakers or yucumin'men of the Stk'emlupsemc te Secwepemc Territory the approximate boundaries of which are identified and shown as "SSN Boundary" in Schedule "A" to the Notice of Civil Claim;

- (c) The SSN is the only governance geo-political unit of the Secwepemc Nation that may, under Secwepemc law, bring a claim for aboriginal title to this territory on behalf of the Secwepemc Nation; and
 - (d) The SSN speaks on behalf of the entire Secwepemc Nation in respect of any governance matters related to the land in SSN Traditional Territory and this has been recognized by the Province in entering into several agreements with the SSN and by engaging in shared decision making through government-to-government engagement with the SSN.
2. In reply to Canada's Response, Part 1, Division 2, paragraph 9, and Part 3, paragraphs 10-12, the SSN respond as follows:
- (a) The Secwepemc's aboriginal title pre-dates and pre-exists any fee simple property interests in Secwepemc Territory;
 - (b) The Project lands, being part of the Railway Belt that the Province transferred to Canada in 1883, were effectively expropriated from the Secwepemc without compensation or regard to the pre-existing Secwepemc aboriginal title;
 - (c) The Secwepemc have consistently put the Respondents on notice of their aboriginal rights and title;
 - (d) In or about 1999, the Secwepemc applied to the British Columbia Registrar of Land Titles to register a caveat and/or certificate of pending litigation with respect to their aboriginal title and rights claims to notify *bona fide* purchasers under the Torrens system of their Aboriginal rights and title in and to certain lands within yucumin'men of the Stk'emlupsemc te Secwepemc Territory. That application was refused and the decision upheld by the British Columbia Supreme Court and Court of Appeal; and
 - (e) The remedies for infringement of aboriginal rights and title in relation to privately held lands might include compensation for a private land owner, and/or an aboriginal rights-holder, and/or the ability of an aboriginal title-holder to regulate the land in question in order to preserve aboriginal interests and exercise aboriginal rights.
3. In reply to Canada's Response, Part 3 paragraphs 13-15, the SSN respond as follows:

- (a) The nature and extent of the Ajax Project was significantly re-designed and changed in or about May 2014 when a new “Ajax South” layout and revised location and associated infrastructure and technology were added further to KGHM’s new General Arrangement;
 - (b) There continues to be a failure on the part of Canada and the Province to adequately and meaningfully consult and accommodate the SSN’s interests with respect to the Ajax Project;
 - (c) The plaintiffs’ claims cannot be barred by limitation statutes or by laches and acquiescence where the relief sought is a declaration of aboriginal rights and title or where fundamental constitutional matters are at issue; and
 - (d) The plaintiffs continue to suffer injury and damages further to the unlawful Authorizations.
4. In reply to Canada’s Response, Part 3 paragraphs 16 and 17, the SSN respond that there is no principled basis upon which aboriginal title to the bed of and the waters above a navigable body of water is any different from aboriginal title to other lands, such that such claims should be treated differently. Further, the plaintiffs’ aboriginal rights and title includes the right to the benefit of the resource itself and the right to make decisions about resources within Stk’emlupsemc te Secwepemc Territory which includes the right to use, manage, and make decisions in relation to the following resources, without limitation:
- (a) The use of land, the planning and management of land use and development, and the resources found in, on and under the land, all within the plaintiffs’ territory;
 - (b) The use of water, the planning and management of water and watershed use and allocation, and the resources found in and under the waters, all within the plaintiffs’ territory;
 - (c) The use of air, the planning and management of air emissions and air quality and the airshed, all above the plaintiffs’ territory; and

- (d) The use of minerals and the planning and management of mineral use and mineral development, including the right to trade in such minerals from the plaintiffs' territory outside of the plaintiffs' territory.
5. In reply to Canada's Response, Part 3 paragraphs 18 and 19, the SSN respond as follows:
- (a) The claim filed by SSN in 2010 as Action No. 44704 (the "Forestry Action") is not duplicative because, while both proceedings claim aboriginal rights and title to Stk'emlupsemc te Secwepemc Territory, the Forestry Action concerns infringements in relation to forestry matters whereas this Action concerns infringements in relation to mining matters;
 - (b) There is no abuse of process as both proceedings are entirely consistent and exist independent of one another. Contrary to the Province's assertion at paragraph 19 that different boundaries are claimed, both proceedings claim aboriginal title to the same territory, the approximate boundaries of which are shown on the same map attached as Schedule "A" to both proceedings. The original Schedule "A" map filed in the Forestry Action noted that the boundary was dynamic and subject to change over time and was later amended by an Amended Notice of Civil Claim filed January 18, 2011;
 - (c) The Forestry Action is currently held in abeyance to allow for attempts at reconciliation with the Province related to forestry and associated activities within Stk'emlupsemc te Secwepemc Territory. To date this abeyance has resulted in a Reconciliation Agreement dated April 10, 2013, as amended, and a Forest, Consultation and Revenue Sharing Agreement and other agreements; and
 - (d) The 2003 Writ claimed aboriginal title for the whole of the Secwepemc Nation, a territory that includes the Stk'emlupsemc te Secwepemc Territory. The fact that the 2003 Writ was filed but not advanced further does not amount to an abuse of process and is not inconsistent with the claims made in this Action.

6. In reply to Canada's Response, Part 3 paragraphs 20 and 21, the SSN respond that there is no such notice required at law and it is not in the interest of the administration of justice to invoke any such requirement.

Date: 18/Oct/2016



Signature of Lawyer for the Plaintiffs

Sarah D. Hansen

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.