



No. S033335
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE AHOUSAHT, EHATTESAHT, HESQUIAHT, HUPACASATH, HUU-AY-AHT, MOWACHAHT/MUCHALAHT, NUCHATLAHT, TLA-O-QUI-AHT, and TSESHAHT BANDS and NATIONS, et al

PLAINTIFFS

AND:

THE ATTORNEY GENERAL OF CANADA and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANTS

FURTHER AMENDED STATEMENT OF DEFENCE OF HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

1. Her Majesty the Queen in right of the Province of British Columbia (“British Columbia”) admits the allegations in paragraphs 16 and 17 of the Fifth Amended Statement of Claim and makes this defence in relation to the claims of the Plaintiffs that relate to matters of constitutional authority reserved to British Columbia as set forth in paragraph 17 or otherwise.

2. In this Statement of Defence, positions taken and admissions made by British Columbia relate to the allegations in the Fifth Amended Statement of Claim in respect of areas over which British Columbia has constitutional authority. British Columbia admits only those allegations expressly admitted in this Statement of Defence and takes no position in respect of allegations

relating to matters within the constitutional authority of the Government of Canada.

The Parties

3. British Columbia admits the allegations contained in paragraphs 1 to 10 of the Fifth Amended Statement of Claim, and specifically admits that:

- (a) The Plaintiff Shawn Atleo is an Indian as defined by the *Indian Act* R.S.C. 1985, c. I-5 and a member of the Ahousaht Indian Band and the Ahousaht Nation.
- (b) The Plaintiff Dawn Smith is an Indian as defined by the *Indian Act* and a member of the Ehattesaht Indian Band and the Ehattesaht Nation.
- (c) The Plaintiff Simon Lucas is an Indian as defined by the *Indian Act* and a member of the Hesquiaht Indian Band and the Hesquiaht Nation.
- (d) The Plaintiff Peter Tatoosh is an Indian as defined by the *Indian Act* and a member of the Hupacasath Indian Band and the Hupacasath Nation
- (e) The Plaintiff Robert Dennis is an Indian as defined by the *Indian Act* and a member of the Huu-ay-aht Indian Band and the Huu-ay-aht Nation.
- (f) [deleted]
- (g) The Plaintiff Lillian Howard is an Indian as defined by the *Indian Act* and a member of the Mowachaht/Muchalaht Indian Band and Mowachaht/Muchalaht Nations.
- (h) The Plaintiff Walter Michael is an Indian as defined by the *Indian Act* and a member of the Nuchatlaht Indian Band and the Nuchatlaht Nation.

(i) The Plaintiff Benedict Williams is an Indian as defined by the *Indian Act* and a member of the Tla-o-qui-aht Indian Band and the Tla-o-qui-aht Nation.

(j) The Plaintiff Richard Watts is an Indian as defined by the *Indian Act* and a member of the Tseshahlt Indian Band and the Tseshahlt Nation.

(k) [deleted]

4. British Columbia admits the allegations contained in paragraph 13 of the Fifth Amended Statement of Claim that the Plaintiffs Ahousaht Indian Band, Ehlettesaht Indian Band, Hesquiaht Indian Band, Hupacasath Indian Band, Huu-ay-aht Indian Band, Mowachaht/Muchalaht Indian Band, Nuchatlaht Indian Band, Tla-o-qui-aht Indian Band, and Tseshahlt Indian Band (collectively, the “Plaintiff Bands”) are bands within the meaning of that term in the *Indian Act*, R.S.C. 1985, c. I-5.

5. In answer to paragraphs 11, 12, 14 and 15 of the Fifth Amended Statement of Claim, British Columbia admits that the Plaintiffs the Ahousaht Nation, the Ehlettesaht Nation, the Hesquiaht Nation, the Hupacasath Nation, the Huu-ay-aht Nation, the Mowachaht/Muchalaht Nations, the Nuchatlaht Nation, the Tla-o-qui-aht Nation, and the Tseshahlt Nation have identified themselves as separate and distinct aboriginal nations that existed as independent organized and self-governing social and political entities at the time of contact with Europeans (“Contact”), but does not know and cannot admit whether each self-identified nation existed as a separate nation with separate rights at the time of Contact. Consequently British Columbia does not admit the representative capacities of each of the individual Plaintiffs.

5.1 In answer to paragraph 12.1 of the Fifth Amended Statement of Claim, and any other claims based on or arising from the existence of the alleged Nuu-chah-nulth Nation as defined in the Fifth Amended Statement of Claim, British Columbia has no knowledge and therefore cannot admit whether the individual Plaintiff Nations have existed together in or as a single aboriginal nation known as the Nuu-chah-nulth Nation or otherwise since the dates alleged in paragraph 12.1, and British Columbia consequently does not admit the present-day existence of a single

aboriginal nation known as the Nuu-chah-nulth Nation or otherwise made up of the individual Plaintiff Nations.

Claim to Aboriginal Fishing Rights

6. British Columbia admits that some or all of those Aboriginal persons commonly known as the Nuu-chah-nulth people engaged in forms of fishing for sustenance purposes prior to Contact, but does not know and therefore cannot admit:

- (a) whether the extent and nature of the fishing activities amounts to an aboriginal right to fish on behalf of all or some of the Plaintiffs;
- (b) if a Plaintiff Band or Nation has an aboriginal right to fish, whether that right extends over all species, or merely some species, and in what location or locations; and
- (c) if a Plaintiff Band or Nation has an aboriginal right to fish, whether that right extends to the maintenance of a commercial fishery or is restricted to sustenance fishing.

7. [blank]

8. [blank]

Claim to Aboriginal Title

9. British Columbia does not admit that the Plaintiffs have aboriginal title over bodies of water or over lands below the surface of the water, including the foreshore, whether as defined in the Fifth Amended Statement of Claim as the Territories or the Fishing Territories or otherwise, for either of the following two reasons:

- (a) as a matter of law, aboriginal title does not subsist over water or land covered by water; and

(b) as a matter of fact, the Plaintiffs did not occupy such Territories or Fishing Territories to the extent necessary to establish aboriginal title.

[paragraphs 10-17 deleted]

WHEREFORE British Columbia submits that this claim be dismissed with costs.

Dated December 19, 2005

John J.L. Hunter Q.C.
John J.L. Hunter Q.C.
Solicitor for the Defendant Her Majesty the Queen
in right of the Province of British Columbia

This FURTHER AMENDED STATEMENT OF DEFENCE is delivered by John J.L. Hunter, Q.C., whose place of business and address for service is Hunter Litigation Chambers, 2100 – 1040 West Georgia Street, Vancouver , B.C. V6E 4H1 (phone: 604-891-2401; fax: 604-647-4554).