

CANADA / JUDGMENT

Malii v. British Columbia

2024 BCSC 2284

COURT

Supreme Court of British Columbia

DECIDED

22 November 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2284 Malii v. British Columbia IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Malii v. British Columbia, 2024 BCSC 2284 Date: 20241122 Docket: S-036687 Registry:

Vancouver 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 Graham Morgan, Watakhayetsxw also known as Deborah Good,

Gwinuu also known as Phyllis Haizimsque, Wii'litsxw also known as Gergory Rush, Haizimsque

also known as Verna Howard, 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

Majesty the King in Right of the Province of British Columbia, the Attorney General of Canada

and Skii Km Lax Ha also known as Darlene Simpson, on behalf of herself and in her capacity as

Tsetsaut/Skii Km Lax Ha Hereditary Chief and on behalf of all members of the Tsetsaut/Skii Km

Lax Ha Nation Defendants And His Majesty the King in Right of the Province of British Columbia

and The Attorney General of Canada Third Parties Before: The Honourable Mr. Justice Stephens

Oral Reasons for Judgment on Applications re Timing for Delivery of Expert Reports In Chambers

Counsel for the Plaintiffs: P.R.A. Grant, K.C. W.C. Wanless E. Ritcey Counsel for the Defendant

and Third Party, His Majesty the King in Right of the Province of British Columbia: K.B. Bergner

M.C. Ohama-Darcus M.E. Casey A.J. Fortin Counsel for the Defendant, Skii km Lax Ha, also

known as Darlene Simpson, also known as Chief Simpson, on behalf of herself and, in her

capacity as Tsetsaut/Skii km Lax Ha Hereditary Chief, on behalf of all members of the Tsetsaut/

Skii km Lax Ha Nation: M.C. Power M. Mackenzie A. Fontaine Counsel for the Defendant and

Third Party, the Attorney General of Canada: A.W. Scarth S.C. Hanson Place and Date of Hearing:

Vancouver, B.C. November 22, 2024 Place and Date of Judgment: Vancouver, B.C. November 22,

2024

[1] THE COURT: These are reasons for judgment in relation to two notices of application: one, filed November 8, 2024, and the other one filed November 12, 2024, and these are my brief reasons for judgment.

[2] I have before me two notices of application, filed November 8 and 12, 2024, brought by the defendant Province and the defendant Tsetsaut Skii km Lax Ha Nation ("Skii Km Lax Ha"), respectively, for extensions of time for the filing of primary expert reports in this action.

- [3] As I understand it, the due date under the Rules falls on December 6th or December 9th, 2024, I have been told, and in any event is imminent, and in view of that imminent timeline, I am giving Reasons for Judgment on this application now. I consider that there is some time sensitivity to the applications and I am giving my Reasons for Judgment now and I will do so concisely.
- [4] I have considered the relief sought in Part 1 of both of the notices of application. In part, or in significant part, both of the notices of application seek extension of time for delivery of primary expert reports to a time period fixed -- either January 10 or 17, 2025 -- or a further time period calculated with respect to certain events with respect to, broadly speaking, document production by the plaintiffs.
- [5] The plaintiffs oppose that part of the application, although the plaintiffs have consented to an extension of time for primary expert reports until January 10, 2025. I should add that the date for trial is March 3, 2025.
- [6] I have not been referred to any case law where an extension of time for serving an expert report has been fixed with reference to events concerning another of the opposing parties' document production; and I find, and I say this with respect, that the part of the applications which seek to fix the deadline with reference to events concerning the plaintiffs' document production appeared to layer in to the applications for an extension of time, functionally, requests for the plaintiffs to do certain things which are already subject to an order (I understand in one case), or could be the subject of other applications for orders. I am not persuaded that I should fix an extension of time date for the service of expert reports with reference to the dates for the plaintiffs to have done certain things, and I refer here specifically to para. 1(b) of the province's application, and para. 1(b) of the Skii Km Lax Ha's application.
- [7] I have had regard to case authority referred to me in connection with extension of time, *Usmon v. Masi*, 2020 BCSC 958, at para.7, which I will not quote but I refer to as part of my considerations.
- [8] I have heard submissions of counsel, and thank them for those submissions. I am of the view that the date of January 10, 2025, should be fixed for the service of expert reports in this matter, subject to any further order of the court, noting again that January 10, 2025 was the date consented to by the plaintiffs.
- [9] With respect to that part of Skii Km Lax Ha's application at para. 2, which related to the service of reports in respect of the third party notice brought by Skii Km Lax Ha, I have heard counsel's submissions in that regard. Counsel for Skii Km Lax Ha are requesting that the upcoming date for service of December 6th or 9th, 2024 be dispensed with and be determined at a future case planning conference.

- [10] Counsel for Skii Km Lax Ha made submissions that it would be difficult, or is difficult, in the absence of close of pleadings in the third party notice to meet a January 10, 2025 deadline. I was not respectfully persuaded by Skii Km Lax Ha that they are unable to take steps to begin to marshal expert evidence for the third party notice at this time so as to be ready to have expert reports prepared in time for trial that is currently set, although I do appreciate, from my understanding, that defences or responses to third party notice have not been served.
- [11] In the circumstances, I am going to set the date, the same date for service of the third party notice primary expert reports for Skii Km Lax Ha of January 10, 2025.
- [12] However, I note that there are applications set for the days of December 17th to 19th, 2024 as well as a case planning conference, and I will adjourn para. 2 of Skii Km Lax Ha's notice of application until that time period, December 17th, 18th and 19th, and hear further submissions on their request for a further deadline for the service of the third party notice expert reports, but I will set at this time a date of January 10, 2025.
- [13] And for those reasons I will grant the following order:
1. Subject to any further order of the court, pursuant to R. 22-4(2) of the Supreme Court Civil Rules, I grant an order extending the time for delivery of all expert reports to all of the parties pursuant to R. 11-6(3) to January 10, 2025. And that disposes of para. 1 of the Province's notice of application and para. 1 of Skii Km Lax Ha's application.
 2. And I secondly adjourn generally, to be reset between December 17th to 19th, 2024, para. 2 of Skii Km Lax Ha's application.
- [14] And I believe that disposes of all of the matters on these applications. Are there any questions on the order I have given, counsel?
- [15] UNIDENTIFIED COUNSEL: No, thank you.
- [16] CNSL M. MACKENZIE: No. Thank you, Justice Stephens.
- [17] UNIDENTIFIED COUNSEL: No issues.
- [18] THE COURT: And I would ask one counsel to prepare orders. If I can ask counsel to prepare orders arising from these reasons in both applications, please.
- [19] CNSL M. MACKENZIE: [Indiscernible/videoconference]
- [20] THE COURT: Okay. And I have given those reasons orally at this time. I reserve the right to edit them if they are transcribed. I thank counsel for their submissions.
- [21] UNIDENTIFIED COUNSEL: Thank you, Justice Stephens.
- [22] THE COURT: We are adjourned. "Stephens J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/22/2024BCSC2284.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/malii-v-british-columbia-2024-bcsc-2284>

Prepared on 27 October 2026 · Esheria