

CANADA / JUDGMENT

Sam v. British Columbia

2014 BCSC 591

COURT

Supreme Court of British Columbia

DECIDED

7 April 2014

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

2014 BCSC 591 Sam v. British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sam v. British Columbia,

2014 BCSC 591

Date: 20140407

Docket: 09-5146

Registry: Victoria

Between:

Chief Robert Sam and Councillors Gary Albany, Edward Norman George,

Nick Albany, Frank George and Ronald Sam, acting on their own behalf

and on behalf of all other members of the Songhees Nation

and the said Songhees Nation

Plaintiffs

And:

Her Majesty The Queen in Right of the Province of British Columbia

and the Attorney General of Canada as representing

Her Majesty the Queen in Right of Canada

Defendants

- and -

Docket: 12-1561

Registry: Victoria

Between:

Seenupin (Chief Andrew Thomas) and Councillor Barbara Lecoy,
acting on their own behalf and on behalf of all other members of
the Esquimalt Nation and the said Esquimalt Nation

Plaintiffs

And:

Her Majesty The Queen in Right of the Province of British Columbia, as
represented by the Attorney General of British Columbia,
Her Majesty The Queen in Right of Canada as represented by
the Attorney General of Canada

Defendants

Before: The Honourable Mr. Justice Bracken

Reasons for Judgment

Counsel for the Plaintiffs:

M. Frey and R. Morahan

Counsel for the Attorney General of Canada

as representing Her Majesty The Queen in

Right of Canada:

C. Cameron and B. Marleau

Counsel for Her Majesty The Queen in

Right of the Province of British Columbia:

H. Gwillim and C. Robb

Counsel for the Esquimalt Nation:

S. Kelliher, T. Leadem, Q.C.

and C. Funt

Place and Date of Trial/Hearing:

Victoria, B.C.

February 4, 5 and 6, 2014

Place and Date of Judgment:

Victoria, B.C.

April 7, 2014

- [1] The plaintiffs Chief Robert Sam and others make application for an order compelling the defendant British Columbia to provide further and better particulars in response to the plaintiffs' demand for particulars of January 28, 2013. The application was heard on June 11, 2013 in conjunction with several other applications.
- [2] At that time, British Columbia, through its counsel, argued that the demand for particulars was premature as British Columbia was in the process of providing a further response to the demand for particulars. In the light of that submission, and over the objections of the plaintiffs, I deferred a decision on the application to allow British Columbia more time to provide responses with the hope that counsel would resolve the matter. Counsel were not able to resolve the matter and the plaintiffs assert that no further responses have been forthcoming. On February 4, 2014, counsel for the plaintiffs requested that a decision be given.
- [3] In its response, British Columbia objected to Demands 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13(c), 13(e) and 13(f) on the ground that they request evidence rather than particulars. Demands 5, 12, 14(b) and 14(d) were objected to on the ground that they request legal argument. Demands 5, 15 and 18 were objected to on the ground that sufficient material facts had already been set out in the response to civil claim.
- [4] British Columbia also says that it anticipates making application for leave to further amend its response and submits that any further particulars should be deferred until after that application has been heard and any amendments allowed have been completed. British Columbia argues that there is no purpose in responding now if the amended pleadings will render some of the demands moot and says that cannot be known until the issues surrounding the pleadings have been resolved. British Columbia indicated it will apply to amend its pleadings within the next few weeks; however, it is clear that both the plaintiffs in this case and the plaintiffs in a companion case of *Esquimalt v. Canada and British Columbia* are opposed to the application as they say the proposed amendments will result in the withdrawal of admissions that British Columbia made in its earlier pleadings.
- [5] The plaintiffs are satisfied with British Columbia's reply to demands 13(a), 13(b), 13(d), 14(a), 14(c), 16 and 17. The plaintiffs seek an order compelling further responses for the remainder of the demands for particulars.

- [6] The leading authority with respect to demand for particulars is *Cansulex Ltd. v. Perry*, [1982] B.C.J. No. 369 (B.C.C.A.). In that case, the court set out the function of particulars at para. 15:

In the course of argument my brother Craig referred to the White Book and to the differences between the British Columbia Rules and the English Rules, both in relation to pleading and in relation to the availability of discovery, but my brother Craig said, and I agree, that the function of particulars as stated in the White Book is as applicable in British Columbia as it is under the English practice, and six points are set out there in this way:

- (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;
 - (2) to prevent the other side from being taken by surprise at the trial;
 - (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial
 - (4) to limit the generality of the pleadings;
 - (5) to limit and decide the issues to be tried, and as to which discovery is required, and
 - (6) to tie the hands of the party so that he cannot without leave go into any matters not included.
- [7] With respect to British Columbia's submission that some of the demands seek details of legal argument, the plaintiffs submit that even though Rule 3-7(9) provides that conclusions of law must not be pleaded unless material facts supporting them are pleaded, it is sometimes appropriate to do so in constitutional law cases. An example of such an order can be found in *Henry v. Canada (Attorney General)*, 2009 BCSC 213 at para. 42. However, British Columbia argues that case dealt with an amendment to the Canada Elections Act that Canada claimed was justified under s. 1 of the Charter of Rights and Freedoms. The demand for particulars in that case related to the material facts that supported the justification defence and British Columbia says the issue in *Henry* is not analogous to this case.

The Specific Demands

- [8] Demand 1 deals with para. 7(b) of the amended response to civil claim filed by British Columbia. That portion of the pleading deals with the pre-treaty historical background. The pleading in issue states as follows:

In the year 1843, while Vancouver Island was a part of the "disputed territory", its Governor and the Hudson's Bay Company ("HBC") created a fur-trading post called Fort Victoria, within what is now the City of Victoria, and took possession of certain lands in Vancouver Island. The HBC's right to occupy the land on Vancouver Island in 1843 was acquired by virtue of a Royal License of exclusive trade with the Indians on the north-west coast of America, granted by the Imperial Crown on May 30th, 1838. The duration of the licence was for 21 years (to expire May 30th, 1859). [my emphasis]

[9] The plaintiffs request particulars of the lands in Vancouver Island that the Hudson's Bay Company took possession of. British Columbia objects on the ground that the demand seeks evidence. The plaintiffs argue that the identification of the specific lands at issue is not evidence. They argue that in the context of British Columbia's amended response, it is important to know, at least in a general way, what lands are referenced by that paragraph of the amended response. British Columbia says it cannot provide particulars for that demand and it is content to have that phrase struck from the amended response. Therefore, I propose to grant the request of British Columbia to strike the words "and it took possession of certain lands in Vancouver Island" from para. 7(b). If there is any objection to that proposal the matter can be spoken to.

[10] The second demand relates to para. 7(c) of British Columbia's amended response. That para. reads:

In response to the establishment and development of Fort Victoria, aboriginal people moved to and established a village at a site directly across the harbour from Fort Victoria, which was later recognized by the Imperial Crown as an Indian Reserve encompassing about 112 acres (the "Songhees Point Indian Reserve"). [my emphasis]

[11] The plaintiffs request particulars of the "aboriginal people" referred to in that paragraph. British Columbia responded by stating "the aboriginal people therein referenced included, but is not necessarily limited to, the members of the Sangees". The plaintiffs say that answer is evasive and insufficient. They argue that British Columbia should be in a position at this stage of the proceedings to know whether any other aboriginal peoples moved to Songhees Point. The plaintiffs say an answer is required to this request to enable the plaintiffs to address the defence that there were no village sites and enclosed fields included within the treaty lands at issue in these proceedings.

[12] British Columbia also says that the particulars requested are not material to the claim over the lands at issue in this case.

[13] British Columbia argues that it is of no assistance to the plaintiffs to know whether other aboriginal peoples resided at Songhees Point. The demand for particulars appears to be connected to a defence that as a result of the Sangees' peoples move to Songhees Point, there were no village sites or enclosed fields that remained within the lands that were surrendered pursuant to the treaty. It seems to me that it is appropriate to require British Columbia to provide particulars as to which aboriginal peoples moved to and established a village on Songhees Point. I therefore direct British Columbia to answer that demand.

[14] With respect to Demand 3, which deals with para. 17 of the amended response, that para. is contained under the heading "Village sites and enclosed fields in the Lands in Issue". The para. states:

At the time of the Chekonein Treaty, the Chekonein,

- (a) did not reside on the Lands in Issue at any material time;
- (b) as of 1844 and/or any other material time, resided at the Songhees Point Indian Reserve, or elsewhere, but not within the Lands in Issue; and
- (c) did not relocate to or to reside at the Lands in Issue at any time after 1843 and/or at any material time.

[15] The portion of the paragraph at issue is subpara. (b) and in particular, the reference to any other areas that the Chekonein people may have resided after 1844.

[16] British Columbia states that the issue the court must resolve is whether or not the signatories to the treaty intended that village sites and enclosed fields would be retained within the lands at issue in these proceedings. British Columbia submits that any other place the Chekonein people may have resided is not material to the action. I agree with British Columbia's point that to identify any other location where the Chekonein people may have lived other than on the lands in issue is not an appropriate demand and British Columbia is not required to respond to it.

[17] With respect to Demand 4, the plaintiffs requested particulars of the "other aboriginal groups from outside the Victoria area" as pleaded in para. 18 of the amended response. British Columbia responded to the demand even though it objected on the basis that the demand sought evidence rather than material facts. It then stated that its answer was "without prejudice to this objection". The plaintiffs seek an order that British Columbia remove its "without prejudice" categorization on the ground that a response to a demand for particulars is in fact a pleading and a pleading by its nature cannot be without prejudice. I agree with that submission and direct that the without prejudice proviso be removed from the response to the demand for particulars.

[18] Demand 5 deals with para. 23 of the amended response. That paragraph states:

In answer to the Notice of Civil Claim as a whole, the Province says the terms of the Victoria Treaties, including the Chekonein Treaty, should be read in the context of, and as understood by, the drafters of the day and in their historical context.

[19] The plaintiffs seek particulars of the "context" and the "historical context" referred to in para. 23. The plaintiffs also seek particulars of British Columbia's understanding of the expression "drafters of the day".

[20] British Columbia submits that the particulars sought by the plaintiffs are not material facts, but either evidence or legal argument. It suggests that if leave is granted following its application to further amend its response, it will move that paragraph under Part 3 of the response entitled "Legal Basis". Para. 23 is a very general pleading and according to Cansulex one of the purposes of a demand for particulars is to limit the generality of the pleadings.

[21] The words "context" and "historical context" are very broad and general terms. To properly reply to the demand for particulars is a difficult if not impossible task at this stage of the proceedings. All of the pleadings in this case obviously deal with historical matters and para. 23 might more appropriately be referred to as legal argument rather than a pleading of material facts or conclusion of law. While "context" and "historical context" are very likely going to be relevant issues for examination in the course of this trial, I do not consider those terms to be an appropriate subject of a demand for particulars. British Columbia is not required to answer that demand.

[22] Demand 6 deals with para. 26 of the amended response. That paragraph states:

The Province says that the HBC entered into the Victoria Treaties for the purposes of making final and binding agreements with all the Lekwungun household groups, and to purchase, alienate or otherwise extinguish all title in lands traditionally occupied and claimed by the Lekwungun, save for the specified exceptions referred to in the Victoria Treaties.

[23] The plaintiffs demand particulars with respect to the "lands traditionally occupied and claimed by the Lekwungun".

[24] British Columbia says that demand seeks evidence rather than material facts. It argues that the issue before the court is the plaintiffs' claim to the lands that are at issue in these proceedings. The pleading at para. 26 deals with lands outside of the lands at issue here. I agree with British Columbia that to further define traditional lands outside of those at issue in these proceedings is not an appropriate subject of a demand for particulars.

[25] In Demand 7 the plaintiffs seek particulars with respect to para. 31 of the amended response. That para. states:

Further, the Province says the HBC and the Chekonein held a common intention, understanding and expectation that under the Chekonein Treaty, only village sites and enclosed fields occupied or used by the signatories in 1846, or in the alternative 1850, would be surveyed or reserved, and village sites and enclosed fields which had been abandoned or voluntarily vacated, or which were occupied or used by aboriginal groups other than the signatories to the Chekonein Treaty would not be surveyed or reserved.

[26] The plaintiffs demand particulars of the "village sites and enclosed fields which had been abandoned or voluntarily vacated, or which were occupied or used by aboriginal groups other than the signatories to the Chekonein Treaty". British Columbia argues that the demand seeks evidence or particulars which go beyond any need to appropriately focus the issues before the court as defined in *Cansulex*. The plaintiffs' demand is similar to a demand that was made upon the plaintiffs by Canada in an earlier application and referenced in my reasons of December 21, 2012. At para. 29 of those reasons I stated:

While I appreciate the difficulty faced by the defendants in this case, the nature of the claim cannot be defined by reference to certain well-defined properties. No one is able to now say precisely where the fields that were used for production of camas or potatoes or other traditional purposes were located, only that they were within a certain defined area.

In that decision, I declined to direct the plaintiffs to provide further particulars.

[27] Demand 7 seeks particulars of the very village sites and enclosed fields that the plaintiffs themselves are unable to precisely define. No doubt, through the evidence of experts, there will be some greater definition of the village sites and enclosed fields; however, I am not prepared to make an order directing British Columbia to respond to the demand.

[28] Demand 8 relates to para. 33 of the amended response. That paragraph states:

In the alternative, the Province says that if any lands within the Lands in Issue were intended as village sites and enclosed fields, the Plaintiffs knowingly waived or abandoned those rights and continued their occupation at Songhees Point Indian Reserve, and elsewhere.

[29] The demand for particulars requests that British Columbia provide particulars in relation to the allegation that "the Plaintiffs knowingly waived or abandoned those rights" to village sites and enclosed fields in the lands at issue. The particulars specifically requested are:

- a. Particulars of the conduct, events or statements alleged to constitute a knowing waiver or abandonment by the Plaintiffs of their rights;
- b. The dates of the conduct, events or statements alleged to constitute a knowing waiver or abandonment by the Plaintiffs of their rights;
- c. For each course of conduct, event or statement, particulars of the person or persons who are alleged to have knowingly waived or abandoned the Plaintiffs' rights to village sites and enclosed fields; and
- d. For each course of conduct, event or statement, particulars of the person or persons in whose favour the Plaintiffs are alleged to have knowingly waived or abandoned their rights to village sites and enclosed fields.

[30] The plaintiffs also seek particulars of the words "and elsewhere" that are contained in that paragraph.

[31] British Columbia states that it will be applying to amend the amended response to remove the phrase "knowingly waived" and to substitute the word "abandoned". The demand for particulars, however, seeks particulars not only of a knowing waiver, but also of abandonment.

[32] If British Columbia has knowledge of conduct on the part of the plaintiffs that it relies on to substantiate its plea of a knowing waiver or abandonment, then particulars should be given. These are, in my view, material facts which British Columbia should disclose in a response to the demand for particulars.

[33] Demand 9 relates to para. 34 of the amended response. That paragraph states:

In the further alternative, the Province says that if any lands within the Lands in Issue were intended as village sites and enclosed fields, those lands were in addition to the lands also set aside at Songhees Point Indian Reserve and the Plaintiffs knowingly waived any rights to those lands and continued their occupation solely at Songhees Point Indian Reserve, and elsewhere.

[34] This demand raises a similar issue to Demand 8 and I will treat it in the same way. However, it seems to me that by responding to para. (a). which requires "Details of the conduct, events or statements alleged to constitute a knowing waiver by the Plaintiffs of their rights" and para. (b) "The dates of such conduct, events or statements alleged to constitute a knowing waiver by the Plaintiffs of their rights" will provide sufficient particulars for the purposes of the Rule. British Columbia is not required to respond to paras. (c) and (d) of Demand 9.

[35] Demand 10 relates to para. 39 of the amended response. Para. 39 states:

In the further alternative, if the Chekonein Treaty granted a right to the Lands in Issue to the Chekonein as alleged or at all, which is denied, such rights were voluntarily relinquished to the Crown upon the establishment of the Songhees Point Indian Reserve.

[36] While I am of the view that particulars should be given of the conduct related to the pleading that treaty rights were voluntarily relinquished to the Crown, British Columbia says that it is prepared to have that paragraph struck from the amended response as the issue is to be addressed by subsequent amendments. I direct that British Columbia respond to the demand for particulars by answering para. (a). However, such response may be deferred until after the application to further amend the response has been heard, and if allowed, the amended response has been filed.

[37] Demand 11 relates to para. 40 of the amended response. In that paragraph British Columbia states:

In the further alternative, if there was an obligation to set aside the Lands in Issue pursuant to the Chekonein Treaty, fair and adequate compensation -- including the setting aside of lands at Songhees Point Indian Reserve or elsewhere, but not within the Lands in Issue -- was provided to the Plaintiffs' ancestors or to any aboriginal group or collectivity which may have had a claim to the use and benefit of the Lands in Issue.

[38] In its response, British Columbia committed to providing the requested particulars and it appears it has already done so. If not, I direct that particulars be provided with respect to Demand 11.

[39] Demand 12 relates to para. 45 of British Columbia's amended response. That paragraph states:

In further answer to the whole of the Notice of Civil Claim, any claim by the lawful successors to the signatories of the Chekonein Treaty ceased upon the disposition of the Lands in Issue to third parties and the construction of farms, residences and related buildings on the Lands in Issue. These uses of the Lands in Issue, which were authorized by the Imperial Crown, HBC, Colony of Vancouver's Island and Colony of British Columbia were clearly and plainly incompatible with the continued use and benefit of the Lands in Issue.

[40] The plaintiffs seek particulars of how the plaintiffs' claims under the treaty ceased upon the disposition of the lands in issue to third parties. The plaintiffs also seek particulars of the disposition and events of construction which are alleged to have ended or terminated the plaintiffs' rights under the treaty. In response, British Columbia alleges that the demands for material facts are in fact requests for evidence or argument. British Columbia says that the details of the disposition of the lands and the remuneration received can be found in the documentary record to which the plaintiffs have equal access.

[41] British Columbia relies on *Jones (Litigation guardian of) v. Donaghey*, 2011 BCCA 6. In that case, it was alleged the defendant had assaulted a child in her care and the child had suffered a serious injury. The argument in the case centred on whether or not the defendant's mental state was in issue in the litigation. During the course of the decision, the court commented on what was meant by the word "issue" in connection with the law of pleading. At para. 9 the court stated:

Accordingly, an "issue" is a disputed fact the resolution of which will, without more, have legal consequences as between the parties to the dispute.

[42] I agree with British Columbia that to provide particulars as to how the plaintiffs' claims under the treaty ceased upon disposition of the lands, it is seeking legal argument and not material facts. On the facts of this case, the historical documents seem to be well-known by both sides and it is clear that at some point, the lands were disposed of to third parties and construction took place upon the lands. That fact should not be in contention. The only contentious point is the issue of how the plaintiffs' claims ceased upon disposition of the lands or construction upon the lands by third parties. British Columbia is not obligated to provide particulars in response to Demand 12.

[43] Demand 13 relates to para. 46 of the amended response. That paragraph states:

Between the establishment of the Songhees Point Indian Reserve and its sale in 1911, the Lekwungun were offered, or otherwise had opportunities to move to a location within the Lands in Issue, but chose not to do so. The Province says that the Plaintiffs are estopped and precluded from making any claim whatsoever to the Lands in Issue.

[44] In its demand, which is divided into five parts, the plaintiffs seek particulars of each offer or opportunity that is referred to in para. 46; the dates; the terms and conditions of each offer or opportunity; the party or parties who made the offer; and the location within the lands in issue. In addition, the plaintiffs seek particulars of the course of conduct or statement by which the ancestors of the plaintiffs are alleged to have communicated their choice not to take up an offer or opportunity.

[45] In its response to the demand for particulars, British Columbia objected to the demands contained in para. 13(c), (e) and (f) because they seek evidence rather than statements of material facts. British Columbia states simply that the information sought as evidence is contained in the historical records.

[46] Para. 46 comes under the heading of "Estoppel" in the amended response. It asserts that the plaintiffs are estopped by reason of passing up opportunities that were allegedly offered to move to a location within the lands at issue, but chose not to. The plaintiffs are entitled to know the facts upon which British Columbia relies for its estoppel argument. While the precise dates and names of individuals involved may not be available or known, British Columbia must at least set out in a general way those facts upon which it relies upon in support of that pleading. The particulars must be sufficient to draw the plaintiffs' attention to the events that give rise to the allegation that the plaintiffs chose to refuse other offers or opportunities to move to a location within the lands at issue.

[47] Demand 14 relates to para. 47 of the amended response. Para. 47 states:

In the alternative, and in further answer to the whole of the Notice of Civil Claim, if the Lands in Issue were reserved for the family and descendants of the Chekonein under the Treaty, which is denied, then this treaty right was extinguished by a series of federal-provincial agreements entered into after 1871 which provided for the final settlement of the location and extent of reserve lands in British Columbia, the transfer of administration and control of those lands from the Province to Canada, and the consequent satisfaction of the constitutional requirements imposed on the Province by Term 13 of the Terms of Union. Thus, any treaty right of the Plaintiffs to the Lands, which is denied, is only a right of compensation as against Canada.

[48] The demand is divided into four parts and it appears that subparagraphs (b) and (d) are at issue. Demand 14(b) states as follows:

- b. Provide particulars of the factual basis on which each of the following agreements, settlements or events is alleged to have extinguished the Plaintiffs' rights to village sites and enclosed fields under the Chekonein Treaty. Without limiting the foregoing, provide particulars of:
 - i. How each of the federal-provincial agreements between the defendants extinguished the Plaintiffs' rights under the Chekonein Treaty;

- ii. How "the series of the federal-provincial agreements entered into after 1871" between the defendants extinguished the Plaintiffs' rights under the Chekonein Treaty;
- iii. How the "final settlement of the location and extent of reserve lands in British Columbia" between the defendants extinguished the Plaintiffs' rights under the Chekonein Treaty;
- iv. How the "transfer of administration and control of those lands" between the defendants extinguished the Plaintiffs' rights under the Chekonein Treaty; and
- v. How the "satisfaction of the constitutional requirement imposed by Term 13 of the Terms of Union" entered into between the Colony of British Columbia and Canada extinguished the Plaintiffs' rights under the Chekonein Treaty.

[49] British Columbia says that the documents in question speak for themselves and interpretation of them is a matter of legal argument and not a proper matter for particulars. I agree with British Columbia. The demand does not seek facts, but rather seeks to draw out information on how British Columbia formulates its argument on the issue. British Columbia need not answer that demand.

[50] With respect to Demand 14(d):

- d. Provide particulars of the factual basis on which each of the following alleged to have extinguished or terminat[ed] the Plaintiffs' right to compensation against the Province and left the Plaintiffs with only a right of compensation again[st] Canada. Without limiting the foregoing, provide particulars of:
 - i. How each of the federal-provincial agreements between the defendants relied upon extinguished or terminated the Plaintiffs' right of compensation against the Province and left the Plaintiffs with only a right of compensation against Canada;
 - ii. How "the series of the federal-provincial agreements entered into after 1871" between the defendants extinguished or terminated the Plaintiffs' right of compensation against the Province and left the Plaintiffs with only a right of compensation against Canada;
 - iii. How the "final settlement of the location and extent of reserve lands in British Columbia" between the defendants extinguished or terminated the Plaintiffs' right of compensation against the Province and left the Plaintiffs with only a right of compensation against Canada.
 - iv. How the "transfer of administration and control of those lands" between the defendants extinguished or terminated the Plaintiffs' right of compensation against the Province and left the Plaintiffs with only a right of compensation against Canada; and
 - v. How the "satisfaction of the constitutional requirements imposed by Term 13 of the Terms of Union" entered into between the Colony of British Columbia and Canada extinguished or terminated the Plaintiffs' right of compensation against the Province and left the Plaintiffs with only a right of compensation against Canada.

[51] With respect to this demand, in my view, the same answer as given with respect to Demand 14(b) applies. The material facts alleged are that the federal-provincial agreements result in no liability for British Columbia. British Columbia will make its argument in due course or lead evidence in support of the argument. The plaintiffs have enough information to respond to the pleadings. The demand is an effort to get disclosure of the legal argument that British Columbia intends to advance. Particulars are intended to provide sufficient material facts to allow a party to respond to a pleading, not to challenge legal argument or to extract information with respect to evidence. British Columbia need not answer either Demand 14(b) or 14(d).

[52] Demand 15 is located at para. 5 of Part 3 of the amended response. That paragraph states:

5. Throughout the period between the events, acts and alleged omissions on which the Plaintiffs now base their claim and the date of commencement of the action, the Plaintiffs have had full knowledge of those events, acts and alleged omissions and of the claim that they now assert. In the alternative, if the Plaintiffs did not have such knowledge, which is denied, they would have obtained such knowledge by the exercise of reasonable diligence. The Plaintiffs, instead of asserting their claim in a timely fashion, have slept on their alleged rights resulting in circumstances that make the prosecution of this action unreasonable.

[53] Demand 15 states:

Part 3, para. 5: Please provide particulars of the allegation that "the Plaintiffs have had full knowledge of those events, acts and alleged omissions and of the claim that they now assert". Please provide particulars as follows:

- a. The events, acts or omissions of which the Plaintiffs had full knowledge;
- b. The facts supporting the claim in this action of which the Plaintiffs acquired full knowledge;
- c. The date or dates on which the Plaintiffs acquired such full knowledge;
- d. The individual or individuals who acquired such full knowledge; and
- e. Particulars of the exercise of due diligence by which it is alleged that the Plaintiffs would have obtained full knowledge of each event, act or omission.

[54] British Columbia states that sufficient particulars of the alleged events, acts and omissions are provided in the plaintiffs' amended notice of civil claim and in British Columbia's amended response to civil claim. The plaintiffs say that they need to have proper notice of the particulars of the facts of which they are alleged to have full knowledge. The plaintiffs say they need proper notice of these matters so they can properly investigate and respond to the allegation and also so that they can tie British Columbia's hands to events over a span of more than 150 years that will be relied upon by British Columbia.

[55] It is not sufficient for British Columbia to respond by telling the plaintiffs that they can find the information if they look for it. If it is easily found, it can be easily summarized by British Columbia. Therefore, British Columbia must give at least a general description of the alleged acts, events and omissions sufficient to provide the plaintiffs with knowledge upon which they can identify the events and the potential impact or effect of those events on their claims.

[56] Demand 18 relates to para. 19 of Part 3 of the amended response. That paragraph states:

In further answer to paragraph 2 of Part 2 of the Notice of Civil Claim, the Province says that the Plaintiffs have failed to take any and all reasonable steps to mitigate the loss and damage suffered by them at such material times when they had the legal capacity and status to do so. By reason thereof, the Plaintiffs are not entitled to recover such alleged loss and damage or any part thereof.

[57] The plaintiffs say that they are entitled to particulars of the acts or omissions of the plaintiffs that British Columbia relies on in its plea of mitigation. In its application response, British Columbia states that it is committed to providing particulars and it appears to have done so. If particulars have not already been provided, I direct that it do so.

[58] In light of the planned Judicial Settlement Conference set for May 26, 2014, I direct that the responses ordered be complied with no later than May 23, 2014 subject to any extension by agreement of counsel.

"J. K. Bracken, J."

The Honourable Mr. Justice Bracken

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/14/05/2014BCSC0591.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sam-v-british-columbia-2014-bcsc-591>

Prepared on 26 October 2026 · Esheria