

MAR 12 2007



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No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

CHIEF KEITH MATTHEW, ON HIS OWN BEHALF AND ON  
BEHALF OF THE MEMBERS OF THE SIMPCW FIRST NATION, OF  
THE SECWEPENC NATION

CHIEF NELSON LEON, ON HIS OWN BEHALF AND ON BEHALF OF  
THE MEMBERS OF THE ADAMS LAKE INDIAN BAND, OF THE  
SECWEPENC NATION

CHIEF MICHAEL RETASKET, ON HIS OWN BEHALF AND ON  
BEHALF OF THE MEMBERS OF THE BONAPARTE INDIAN BAND,  
OF THE SECWEPENC NATION

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON  
BEHALF OF THE MEMBERS OF THE KAMLOOPS INDIAN BAND,  
OF THE SECWEPENC NATION

CHIEF FELIX ARNOUSE, ON HIS OWN BEHALF AND ON BEHALF  
OF THE MEMBERS OF THE LITTLE SHUSWAP INDIAN BAND, OF  
THE SECWEPENC NATION

CHIEF JUDY WILSON, ON HER OWN BEHALF AND ON BEHALF  
OF THE MEMBERS OF THE NESKONLITH INDIAN BAND, OF THE  
SECWEPENC NATION

CHIEF PAUL SAM, ON HIS OWN BEHALF AND ON BEHALF OF  
THE MEMBERS OF THE SHUSWAP INDIAN BAND, OF THE  
SECWEPENC NATION

CHIEF RON IGNACE, ON HIS OWN BEHALF AND ON BEHALF OF  
THE MEMBERS OF THE SKEETCHESTN INDIAN BAND, OF THE  
SECWEPENC NATION

CHIEF WAYNE CHRISTIAN, ON HIS OWN BEHALF AND ON  
BEHALF OF THE MEMBERS OF THE SPLATSIN FIRST NATION,  
OF THE SECWEPENC NATION

CHIEF MICHAEL LeBOURDAIS, ON HIS OWN BEHALF AND ON  
BEHALF OF THE MEMBERS OF THE WHISPERING  
PINES/CLINTON INDIAN BAND, OF THE SECWEPENC NATION

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA,  
THE ATTORNEY GENERAL OF CANADA and  
LHEIDLI T'ENNEH and LHEIDLI T'ENNEH INDIAN BAND

DEFENDANTS

**WRIT OF SUMMONS AND STATEMENT OF CLAIM**

**Name and address of each plaintiff:**

**Chief Nelson Leon**  
**Adams Lake Indian Band**  
 P.O. Box 588  
 6453 Hillcrest Road  
 Chase, B.C. V0E 1M0

**Chief Shane Gottfriedson**  
**Kamloops Indian Band**  
 200 - 315 Yellowhead Highway  
 Kamloops, B.C. V2H 1H1

**Chief Judy Wilson**  
**Neskonlith Indian Band**  
 P.O. Box 608  
 743 Chief Neskonlith Road  
 Chase, B.C. V0E 1M0

**Chief Keith Matthew**  
**Simpew First Nation**  
 500 Dunn Lake Road  
 P. O. Box 220  
 Barriere, B.C. V0E 1E0

**Chief Wayne Christian**  
**Splatsin First Nation**  
 5775 Old Vernon Rd.  
 P.O. Box 460  
 Enderby, B.C. V0E 1V0

**Chief Michael Retasket**  
**Bonaparte Indian Band**  
 P.O. Box 669  
 2610 Perry Road  
 Cache Creek, B.C. V0K 1H0

**Chief Felix Arnouse**  
**Little Shuswap Indian Band**  
 P. O. Box 1100  
 1876 Little Shuswap Lake Road  
 Chase, B.C. V0E 1M0

**Chief Paul Sam**  
**Shuswap Indian Band**  
 P.O. Box 790  
 4846 Airport Road  
 Invermere, B.C. V0A 1K0

**Chief Ron Ignace**  
**Skeetchestn Indian Band**  
 P.O. Box 178  
 330 Main Drive  
 Savona, B.C. V0K 2J0

**Chief Michael LeBourdais**  
**Whispering Pines/Clinton Indian Band**  
 R.R. 1, Site 8, Comp. 4  
 615 Whispering Pines Drive  
 Kamloops, B.C. V2B 8S4

**Name and address of each Defendant:**

**Her Majesty the Queen**  
**In Right of the Province of British Columbia**  
 Ministry of the Attorney General  
 P.O. Box 9280, Stn. Prov. Govt.  
 1001 Douglas Street  
 Victoria, B.C. V8W 9J7

**Lheidli T'enneh Indian Band**  
 1041 Whenun Rd.  
 Prince George, B.C. V2K 5X8

**The Attorney General of Canada**  
 Department of Justice  
 900 - 840 Howe Street  
 Vancouver, B.C. V6Z 2S9

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

*To the defendant(s):* Her Majesty the Queen in Right of the Province of British Columbia,  
The Attorney General of Canada and  
Lheidli T'enneh and Lheidli T'enneh Indian Band

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set-off or counter-claim that you wish to have taken into account at the trial, YOU MUST:

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above Registry of this Court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this Writ, and
- (b) if a Statement of Claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above Registry of this Court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the Registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF:

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

#### TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[Or, if the time for defence has been set by order of the Court, within that time.]

## TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff(s) within 14 days after the later of:

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the *Rules of Court*, and
- (b) the end of the Time for Appearance provided for above.

[Or, if the defence has been set by order of the Court, within that time.]

- (1) The address of the Registry is:

800 Smithe Street  
Vancouver, B.C. V6Z 2E1

- (2) The plaintiffs' address for delivery is:

Attention: **Clarine Ostrove**  
Mandell Pinder  
Barristers & Solicitors  
422 – 1080 Mainland Street  
Vancouver, B.C. V6B 2T4

Tel.: (604) 681-4146 Fax: (604) 681-0959

- (3) The name and office address of the plaintiffs' solicitor is:

Attention: **Clarine Ostrove**  
Mandell Pinder  
Barristers & Solicitors  
422 – 1080 Mainland Street  
Vancouver, B.C. V6B 2T4

Tel.: (604) 681-4146 Fax: (604) 681-0959

The plaintiffs' claim is as set out in the Statement of Claim below:

**STATEMENT OF CLAIM**

**The Secwepemc Nation and its Territory**

1. The plaintiff Chiefs are members of their respective Bands and the Secwepemc Nation and bring this action on their own behalf and on behalf of all members of their Bands and

the Secwepemc Nation, except as it relates to the territorial interests under the stewardship of the northern Secwepemc Bands. The Adams Lake Indian Band, the Bonaparte Indian Band, the Kamloops Indian Band, the Little Shuswap Indian Band, the Neskonlith Indian Band, the Shuswap Indian Band, the Simpcw First Nation, the Skeetchestn Indian Band, the Splotsin First Nation and the Whispering Pines/Clinton Indian Band are each a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended. The plaintiffs are Aboriginal peoples within the meaning of s. 35(1) of the *Constitution Act, 1982*, and are located in the interior of British Columbia.

2. The plaintiffs claim that prior to and at the time of the assertion of Crown sovereignty the plaintiffs' ancestors were members of an organized society with their own language, culture and laws and occupied exclusively or shared exclusively with other aboriginal nations the territory, including lands covered by water and resources thereon and therein, comprising the area shown on the map attached as Schedule "A" to this Statement of Claim ("the Secwepemc Territory"). The plaintiffs assert that they continued to the extent possible to occupy, and to maintain a substantial connection to the Secwepemc Territory. The plaintiffs assert existing Aboriginal title to the Secwepemc Territory.
3. The plaintiffs claim that the Secwepemc people from whom the plaintiffs have descended exercised customs, practices and traditions in accordance with their own laws within the Secwepemc Territory which were integral to the distinctive society of the Secwepemc Nation prior to contact with Europeans. In particular, the plaintiffs claim that Secwepemc people managed and conserved the resources, and used and harvested the resources (including the fish, the game, the migratory birds, the trees and plants, the waters, and the minerals) within the Secwepemc Territory. The plaintiffs assert existing Aboriginal rights within the Secwepemc Territory.
4. The area at issue in these proceedings, which is the Encroachment Area defined in paragraph 20 below, is an area over which the plaintiffs assert exclusive Aboriginal title and rights.

## The Defendants

5. The defendant, the Attorney General of Canada is designated as the representative of Her Majesty the Queen in right of Canada ("Canada") for the purpose of proceedings against the Crown under the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. L-50.
6. The defendant, Her Majesty the Queen in Right of the Province of British Columbia ("British Columbia") is that aspect of the Crown in whom the lands of British Columbia have been vested pursuant to s.109 of the *Constitution Act, 1867*, subject to "any Interest other than that of the Province in the same", including Aboriginal title.
7. The defendant, Lheidli T'enneh, describe themselves as Carrier people who assert that their heritage, history and culture, including their language and their religion, are tied to the lands and waters surrounding the confluence of the Fraser and the Nechako Rivers. The defendant Lheidli T'enneh Indian Band is a "band" as defined in the *Indian Act*. The defendants, Lheidli T'enneh and Lheidli T'enneh Indian Band are together referred to as "the Lheidli T'enneh".

## Notice of Secwepemc Rights and Title

8. At all material times, the defendants Canada and British Columbia had notice of the Aboriginal rights and title claimed by the plaintiffs, including, but not limited to:
  - (a) Historical, archaeological and other materials regarding the North Thompson [now Simpcw First Nation] Indian Band's Specific Claim for Loss of Reserve Land at Tête Jaune Cache;
  - (b) Memorial to Sir Wilfred Laurier, 1910;
  - (c) Memorial to the Honourable Frank Oliver, 1911;
  - (d) Materials filed in the *Jules* Action, B.C. Supreme Court Action No. 23914, Vernon Registry (1999);
  - (e) Writ of Summons, B.C. Supreme Court Action No. L033528 (2003).

**BCTC Process**

9. The BC Treaty Commission (“BCTC”) was established by the “British Columbia Treaty Commission Agreement” dated September 21, 1992 between Canada, British Columbia and the First Nations Summit to advance tripartite treaty negotiations in the Province of British Columbia. That agreement was confirmed in provincial and federal legislation.
10. The BCTC process established six stages to negotiate a treaty: Statement of Intent to Negotiate, Readiness to Negotiate, Negotiation of Framework Agreement, Negotiation of an Agreement-in-Principle, Negotiation to Finalize a Treaty, and Implementation of a Treaty.
11. If a First Nation submits a Statement of Intent that meets the criteria established by the BCTC, the First Nation’s claim is accepted into the BCTC process. The criterion with respect to its territorial claims is that a First Nation attach to the Statement of Intent a map showing its claimed traditional territory.
12. Regarding overlapping claims to the territories of neighbouring First Nations, BCTC policy requires First Nations who are negotiating treaties, to attempt to resolve possible overlaps with their neighbouring First Nations. The BCTC has urged Canada and British Columbia to not conclude agreements in principle until overlap issues have been resolved or efforts exhausted.

**Lheidli T’enneh Treaty Negotiations**

13. On or about December 16, 1993, the Lheidli T’enneh submitted a Statement of Intent to negotiate a Treaty under the BCTC process. The Statement of Intent included a map, which is attached as Schedule “B” to this Statement of Claim, asserting the traditional territory of the Lheidli T’enneh in British Columbia. The Statement of Intent did identify four potential overlap claims with other First Nations, but did not identify potential overlaps with the plaintiffs, or any of them, despite Lheidli T’enneh’s knowledge of the plaintiffs’ assertion of Aboriginal title and rights to the Secwepemc Territory.

14. During the treaty negotiations, the Lheidli T'enneh did not provide evidence to support the assertion that its members have Aboriginal rights or occupied the lands in the Encroachment Area.
15. The parties to the Lheidli T'enneh Treaty Negotiations under the BCTC process are the defendants. The Table Readiness documents were completed in February 1995. The defendants signed a Framework Agreement on or about August 26, 1996. They entered an Agreement-in-Principle on or about July 26, 2003. On or about October 29, 2006, the chief negotiators of the defendants initialled the Lheidli T'enneh Final Agreement ("LTFA").
16. Prior to November, 2004, section 48 of the Lheidli T'enneh Agreement-in-Principle made it clear that the LTFA would only be inoperative in respect of the adverse effects on the rights of other aboriginal people if those rights were finally determined by a court.
17. On November 18, 2004, between the signing of the Agreement-in-Principle and the LTFA, the Supreme Court of Canada handed down its decisions in *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73 and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, 2004 SCC 74.
18. Section 52 of the LTFA implements the Agreement-in-Principle and provides that if a court "finally determines" that any other aboriginal people have rights under s.35 of the *Constitution Act, 1982* the LTFA will only operate and have effect to the extent that it does not adversely affect those rights. The LTFA makes no provision for British Columbia's and Canada's obligations to consult with and accommodate the interests of other aboriginal peoples regarding the operation and effect of the LTFA, in the absence of a final determination in court.
19. The LTFA contains, among other things, provisions which will provide the Lheidli T'enneh with a Treaty right to harvest fish and wildlife, gather plants and harvest migratory birds within the Lheidli T'enneh Area. The LTFA will also provide the Lheidli T'enneh with resource management and water rights in the Lheidli T'enneh Area,

as well as a Treaty right to participate in the management of wildlife and parks. The LTFA defines the Lheidli T'enneh Area to be that territory described in the map attached to the Lheidli T'enneh's Statement of Intent.

20. The Lheidli T'enneh Area encroaches into the Secwepemc Territory to an area of approximately 10,989 square kilometres (the "Encroachment Area"). A map showing the Encroachment Area is attached as Schedule "C" to this Statement of Claim.
21. The defendants are now engaged in the process of ratifying the LTFA. The Lheidli T'enneh has scheduled a staged community vote which begins on March 17, 2007 and ends on March 30, 2007 to ratify the LTFA. If the LTFA is approved by the Lheidli T'enneh community members and eligible participants in the ratification process, British Columbia will introduce ratification legislation. If the provincial legislature approves the LTFA, then Canada will introduce ratification legislation. If both Houses of Parliament approve the LTFA, then it will come into force as a Treaty by way of an Order by the Governor in Council.
22. The defendants, through their signing and ratification of the LTFA, will provide constitutional protection to Lheidli T'enneh Treaty rights in the Lheidli T'enneh Area, including in the Encroachment Area.

#### **Duty to Consult and Accommodate**

23. Canada and British Columbia owe a duty to consult with the plaintiffs prior to making legislative, regulatory and government policy and administrative decision which may adversely affect the plaintiffs' asserted Aboriginal title and rights, including the decision to authorize the initialing of the LTFA by the respective chief negotiators for each government and the decision to proceed with ratification by the provincial Legislature and the federal Parliament.
24. The duty to consult owed by Canada and British Columbia is grounded in the honour of the Crown. The Crown (in right of Canada and in right of British Columbia) is under an obligation to inform itself of the potential impact of the LTFA on the exercise of the plaintiffs' asserted Aboriginal title and rights, and to communicate its findings to the

plaintiffs. The Crown has an obligation to engage with the plaintiffs in good faith, justify the potential impact, and substantially address and accommodate the concerns of the plaintiffs prior to initialing the LTFA and engaging in the ratification process.

### **Breach of the Honour of the Crown**

25. Neither Canada nor British Columbia determined, recognized, or respected the plaintiffs' title and rights before authorizing their respective chief negotiators to initial the proposed LTFA and initiate the ratification process.
26. As set out above, since they began negotiations with the Lheidli T'enneh and throughout the negotiation process, Canada and British Columbia have had notice of the Secwepemc Nation's asserted title and rights, the boundaries of the Secwepemc Territory, and the fact that the LTFA may adversely affect the plaintiffs' asserted Aboriginal title and rights. Further, at all material times, the Crown defendants had actual and constructive knowledge of the fact that the Statement of Intent Map that the Lheidli T'enneh filed with the BCTC, includes the Encroachment Area within the Secwepemc Territory.
27. Despite this knowledge, for the approximately 14 years that the defendants were negotiating the LTFA in an area which includes the Encroachment Area, neither Canada nor British Columbia made any effort to engage with the plaintiffs and no process was put in place to ensure that the plaintiffs' rights and title were determined, recognized, or respected.
28. The defendants Canada and British Columbia did not begin to discuss the Lheidli T'enneh treaty negotiations with the plaintiffs until the LTFA was finalized and the ratification process was agreed upon. Despite repeated attempts by the plaintiffs to engage with these defendants in the fall of 2006, the first formal meeting between Canada, British Columbia, and the plaintiffs was facilitated by the BCTC and held on February 21, 2007 after the LTFA was finalized and signed by the defendants.
29. Neither Canada nor British Columbia informed itself of the impact of the proposed LTFA on the exercise of the plaintiffs' asserted Aboriginal title and rights.

30. Neither Canada nor British Columbia has attempted to consult the plaintiffs in good faith, with the intention of substantially addressing the concerns of the plaintiffs.
31. Neither Canada nor British Columbia has discharged its obligation to consult and accommodate the plaintiffs with respect to the proposed Crown decision to ratify the LTFA.

### **Irreparable Harm to Plaintiffs**

32. Pursuant to, among other things, clause 38 and Chapter 4 of the LTFA, the ratification of the LTFA by the defendants purports to define and give constitutional protection or contractual commitments to Lheidli T'enneh rights within the Encroachment Area, including but not limited to:
  - (a) the right to make additions to Lheidli T'enneh lands, with the agreement of Canada and British Columbia, to which laws made by the Lheidli T'enneh Government will apply and which will include surface and subsurface resources contained on and under the lands;
  - (b) the right to identify and acquire two parcels of provincial Crown lands of up to 100 hectares in size for purposes of "destination resort development";
  - (c) the right to have British Columbia establish water reservations in favour of the Lheidli T'enneh for purposes of investigating the suitability of the subject streams for hydro-power development;
  - (d) the right to harvest fish and aquatic plants for food, social and ceremonial purposes;
  - (e) the right to a defined harvest level for sockeye salmon and other fish species;
  - (f) the right to harvest wildlife for food, social and ceremonial purposes; and
  - (g) the right to processes of consultation with Canada and British Columbia in relation to the above-referenced rights.

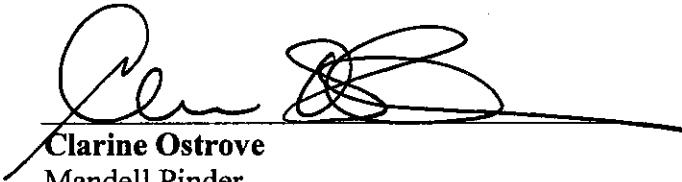
33. As a result of the LTFA the Lheidli T'enneh have already taken steps to assert its anticipated rights in the Encroachment Area. Among other steps, the Lheidli T'enneh have given notice to the Crown of its interest in obtaining water licences for independent power projects within the Encroachment Area.
34. If the LFTA is ratified and becomes a treaty its direct and detrimental impacts on the manner in which Canada and British Columbia can and will consult with the plaintiffs and accommodate their asserted Aboriginal title and rights will take on constitutional significance and will be impossible to undo.
35. Wherefore the plaintiffs seek:
- (a) a declaration that to the extent that the Lheidli T'enneh Final Agreement purports to grant the Lheidli T'enneh rights or interests in the Encroachment Area, being that part of the Lheidli T'enneh Area which encroaches into the Secwepemc Territory it:
    - (i) violates the honour of the Crown,
    - (ii) is unconstitutional pursuant to section 35 of the *Constitution Act, 1982*; and
    - (iii) is void and of no force and effect pursuant to section 52 of the *Constitution Act, 1982*;
  - (b) a declaration that British Columbia and Canada owe the plaintiffs an obligation to engage in meaningful and good faith discussions, with the intention of determining, recognizing and respecting the plaintiffs' asserted Aboriginal title and rights and substantially addressing the plaintiffs' concerns prior to ratifying that portion of the Lheidli T'enneh Final Agreement that purports to grant the Lheidli T'enneh any rights or interests in the Encroachment Area, being that part of the Lheidli T'enneh Area which encroaches into the Secwepemc Territory;
  - (c) an interim order directing British Columbia and Canada to engage in meaningful and good faith negotiations, to be supervised by the Court, with the intention of

determining, recognizing, and respecting the plaintiffs' asserted Aboriginal title and rights and substantially addressing the plaintiffs' concerns prior to taking any steps to ratify that portion of the Lheidli T'enneh Final Agreement that purports to grant the Lheidli T'enneh any rights or interests in the Encroachment Area, being that part of the Lheidli T'enneh Area which encroaches into the Secwepemc Territory;

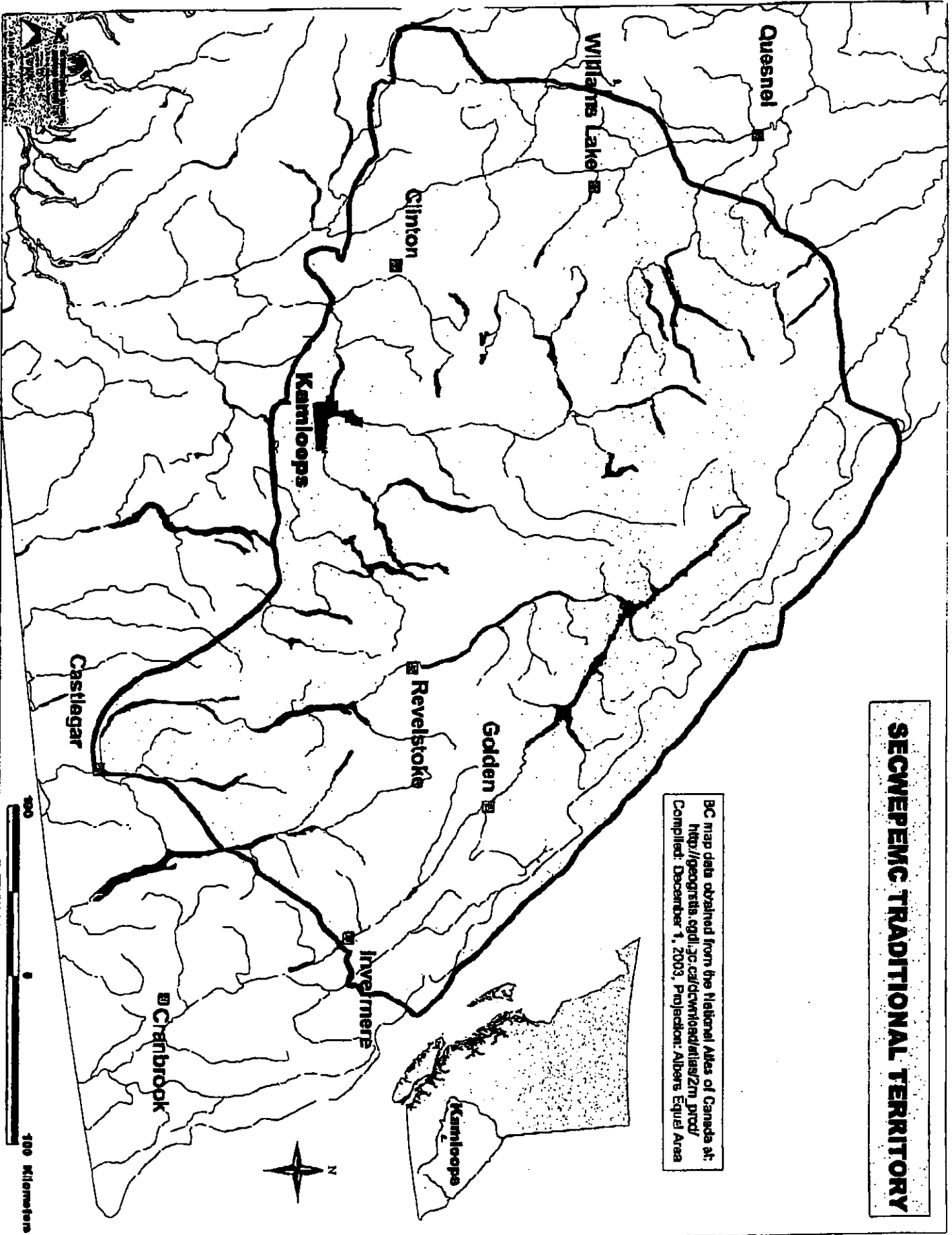
- (d) an interim injunction enjoining the defendants from acting pursuant to the Lheidli T'enneh Final Agreement in any manner that purports to grant the Lheidli T'enneh any rights or interests in the Encroachment Area, being that part of the Lheidli T'enneh Area which encroaches into the Secwepemc Territory; and
- (e) costs of this action.

PLACE OF TRIAL: Vancouver, British Columbia

DATED: March 12, 2007



**Clarine Ostrove**  
Mandell Pinder  
Barristers & Solicitors  
422 – 1080 Mainland St.  
Vancouver, BC V6B 2T4  
Tel.: (604) 681-4146  
Fax: (604) 681-0959  
Counsel for the Plaintiffs



**SECWEPEMC TRADITIONAL TERRITORY**

BC map data obtained from the National Atlas of Canada at:  
<http://geogratis.ca/geogratis.aspx?lang=eng>  
Compiled: December 1, 2003, Projection: Albers Equal Area

0 50 100 Kilometers

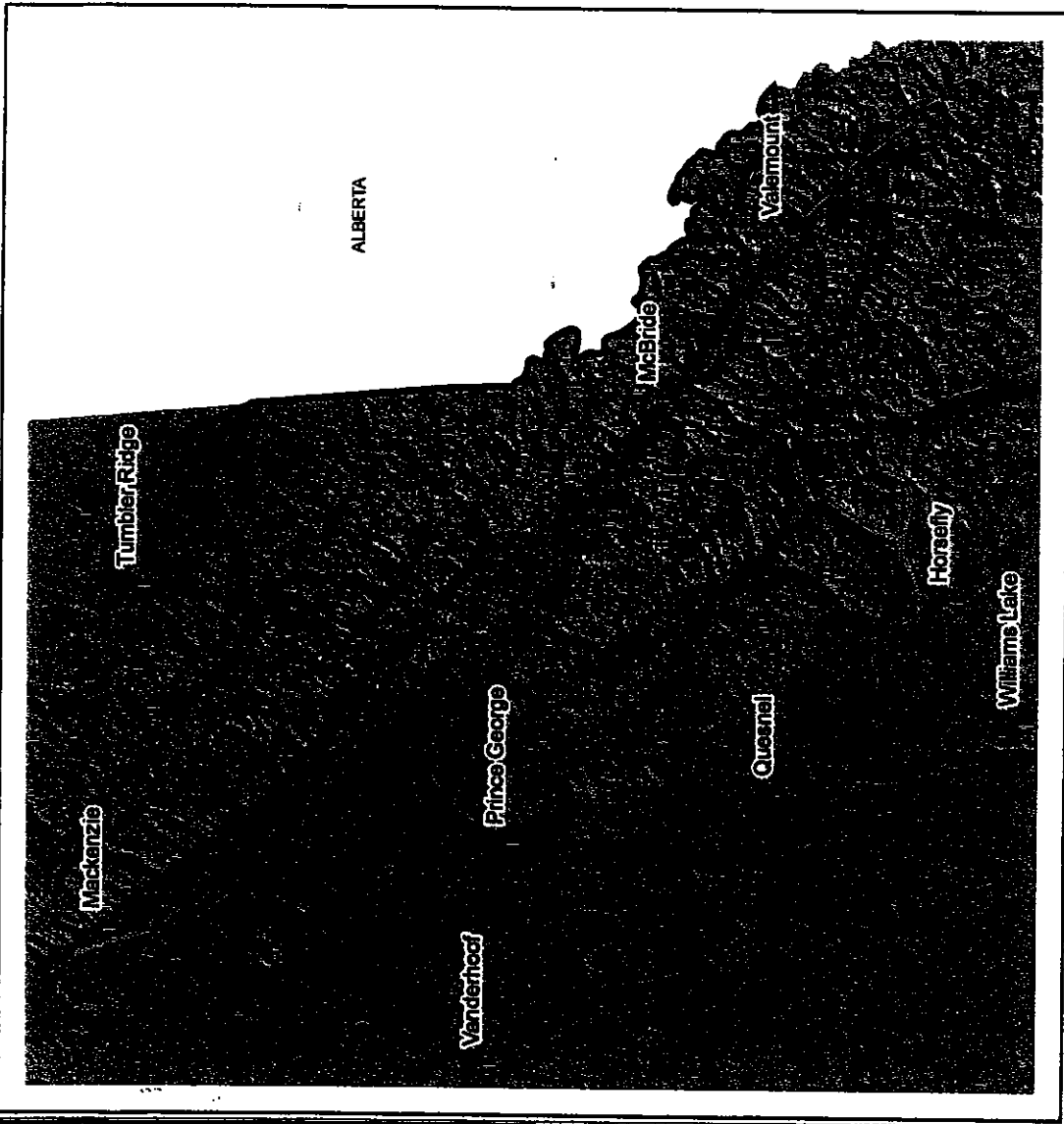


Produced by the  
BC Treaty Commission

Statement of Intent  
Traditional Territory Boundary  
Lheidli T'enneh Band



This map represents approximate boundary of the traditional territory described in the First Nation Statement of Intent. The boundary is for illustrative purposes only, and may be updated in the future.



# Secwepemc Traditional Territory

Alberta

## Legend

- Roads
- Lheidli T'enneh - SOI
- Secwepemc Trad. Territory
- Lakes
- Ocean

Scale: 1:800,000



For Scale: 1:800,000  
 Date: March 08, 2007  
 Software: ArcMap 9.2  
 Company: Clow Point Cartography

Line 1 Treaty Band Boundary  
 Lake Source  
 Ministry of Agriculture and Lands  
 Government of Alberta  
 Corporate Information Service

There are approximate boundaries of traditional territories, identified as First Nations  
 Settlements of interest to negotiate treaties which have been submitted to and accepted  
 by the B.C. Treaty Commission

Secwepemc Boundary  
 Lake Source  
 Last updated: October 17, 2006  
 Ministry of Agriculture and Lands  
 Government of Alberta  
 Corporate Information Service

Disclaimer  
 An integrated boundary compiled  
 based on an image found at  
 the following URL: <http://www.citbc.ca/territories>  
 Date: 11/01/06  
 Projection: Albers, Conic Equal Area

