



S = 158 438  
No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

SPLATSIN and KUKPI7 WUNUXTSIN (WAYNE CHRISTIAN) on behalf of himself and on behalf of the members of Splatsin

**PLAINTIFF**

**AND:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

**DEFENDANT**

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

**CLAIM OF THE PLAINTIFF**

**Part 1 - STATEMENT OF FACTS**

**(a) Background**

1. The Plaintiff Splantsin also known as Splantsin te Secwepemc, and formerly known as the Spallumcheen Indian Band ("Splantsin"), is one of the communities who pre-contact comprised the Secwepemc (sometimes referred to as the Shuswap) Nation ("the Secwepemc"). The Secwepemc are Indigenous People who speak Secwapemactsin. Prior to the arrival of settlers and the assertion of Crown sovereignty in British Columbia the Secwepemc occupied a territory – their homelands – situated in the Interior of British Columbia. The Secwepemc governed themselves and their homelands, and resolved disputes amongst themselves and with their neighbours, in accordance with Secwepemc laws and legal orders.

2. Splitsin is also a band (the "Band") within the meaning of the *Indian Act*, RSC 1985, c. I-5, (the "Indian Act") and the council of the Band ("Council") is a council within the meaning of the Indian Act.
3. The Plaintiff, Kukpi7 Wunuxtsin Wayne Christian, is the elected chief of the Band, and brings this Claim on his own behalf and on behalf of all Splitsin members.
4. The Defendant Her Majesty the Queen in right of the Province of British Columbia (the "Province") is named in these proceedings pursuant to section 7 of the *Crown Proceeding Act*, RSBC 1996, c. 89. The Province is represented by the Minister of Children and Family Development.
5. Secwepemc laws and legal orders are central to Secwepemc society. These laws and legal orders embed history, knowledge, experiences, and practices relevant to the continuation and evolution of Secwepemc culture and society. Secwepemc laws are passed from one generation to the next through oral histories and the training of children by their extended families, informing each new generation of Secwepemc in respect of identity, culture and tradition. Oral histories hold the moral, legal and spiritual teaching of Secwepemc society.
6. Secwepemc laws acknowledge the place of children at the foundation of Secwepemc society, and at the very centre of Secwepemc culture, and families. Children learn from oral histories which convey important lessons about what it means to be Secwepemc and how to properly conduct oneself in, and be a contributing member of, Secwepemc society.
7. Pursuant to Secwepemc laws and legal orders, each local Secwepemc community has the responsibility to make decisions in respect of the protection and care of children. Each local community is responsible for applying and enforcing Secwepemc laws at the local community level. Each local community is comprised of a network of extended families which interact with each other as families, and under the authority of their leaders known as Kukpi7 or Chief, or head man. Splitsin is a local community which is responsible for the care and protection of Splitsin children in accordance with Secwepemc laws.

**(b) Secwepemc Laws and Legal Orders Related to the Protection and Care of Splantsin Children**

8. Pursuant to Secwepemc laws and legal orders, decisions involving the protection and care of Splantsin children have always been made within the community. Each child is considered to have a right to belong to his or her community, and the community has the right and responsibility to protect and care for its children.
9. Secwepemc customary family laws applied by Splantsin prescribe governing legal principles. The extended families that comprise Splantsin each had their own head man and important decisions internal to the families were made by the head man in consultation with the Aunties, who are Elder women of the community. Where appropriate, especially if the decision affected more than one extended family, the heads of each of the families would meet, and ultimately look to the authority of Splantsin's head chief as the final decision-maker. The head chief was considered the father of the community.
10. Under Secwepemc customary family laws the head of an extended family or the head chief of Splantsin had the role of making decisions in relation to the protection and care of Splantsin children. Since the imposition of the Indian Act, it is the elected Council that now stands in that position of authority and thus it is Council that is the guardian of Splantsin children in need of protection and care under Secwepemc laws.
11. Under Secwepemc laws, the extended family is the foundational socio-economic unit within the collective. The concept that children "belong" solely to their parents is not a Secwepemc concept.
12. The Secwepemc understand children to be a gift from the Creator. Each child comes into the world connected to the land. For this reason, Secwepemc laws and customs direct that the placenta be buried on the land.
13. Secwepemc laws and legal orders determine who the appropriate person is to carry out different aspects of child-rearing and training. Secwepemc laws concerning child-rearing and training are embedded within Secwapemactsin, where different words are used to identify extended family members and their relationships depending on whether they are from a child's mother's or father's side. With those relationships come different roles and

responsibilities for child-rearing. Secwepemc laws specify who in the extended family has the responsibility to transfer specific knowledge to a child.

14. Child-rearing responsibilities within Splatsin include training the child to understand how he or she relates to the family and by extension the Splatsin community, the Secwepemc and beyond. Critical to this are the Secwepemc laws and legal orders embedded in the oral histories that help children understand their place and role in the Secwepemc world, where all living and spirit beings are inter-connected, and understand spirituality and kinship ties within and outside of Splatsin. Respect for oneself, one's relatives and for all living things is instilled from an early age and is seen as one of the essential elements to a functioning and peaceful community. "Kw'selktken," meaning "being relatives," connects a person within his or her own community and bonds him or her with neighbouring Secwepemc communities.
  15. Secwepemc customary family laws provide for the responsibilities of the extended family in relation to raising a child who lost his or her primary caregiver, either through death or disability. The circumstances of the child, including gender, age and parentage, would be factors in determining who, in accordance with Secwepemc customary family laws, would take on the main role of caregiving. A child might also be "given" by way of traditional adoption by ceremony to an infertile relative; or a child with particular traits or talents, especially if he or she is a first-born grandchild, would be cared for and raised by grandparents for the purpose of training him or her as a keeper of the knowledge for the next generation.
- (c) The Splatsin Child Welfare By-law: A Modern Expression of Secwepemc Customary Family Laws**
- (i) The Mischief Addressed by the By-law**
16. Secwepemc laws and legal orders for protecting and caring for Splatsin children, as described above in paragraphs 8 to 15, were disrupted and affected by colonization, and the unilateral imposition of assimilationist policies and legislation implemented by Crown governments. This includes residential schools and the imposition of provincial child welfare

legislation which did not respect Splantsin authority to protect and care for its children in accordance with Secwepemc laws and legal orders.

17. During the 1960s and into the 1970s, the provincial ministry responsible for child protection services (now known as the Ministry of Children and Family Development, or the "Ministry") began taking Splantsin children into care in large numbers. During that period, many Splantsin children were apprehended by the Ministry, removed from their community and placed in foster homes. In most cases, after apprehension, there was then little contact between the children and their families or Splantsin. This period of time has often been referred to as the "Sixties Scoop."
18. During the mid- to late 1970s, some of the Splantsin children who had been taken into care by the Ministry and were then young adults, began to find their way home to Splantsin. Some who were still teenagers ran away from their foster placements. When they returned, they did not know their families or understand what it meant to be Splantsin and Secwepemc.
19. This was a time of turmoil for Splantsin. Many of the former children-in-care of the Ministry who returned to Splantsin had trouble re-integrating into families who had been traumatized by their removal years ago, and no longer knew them.
20. The large-scale removal of Splantsin children undermined the extended family as the governing unit of Splantsin. Children are essential to Splantsin cultural survival and when they are removed from the community, the connection between the past and future is severed; the impact has a ripple-effect that extends beyond the immediate family.
21. The removal of Splantsin children by the Ministry became a critical issue for Council because the loss of large numbers of children and the consequential impact had been devastating to the well-being of removed children and the entire Splantsin community.

**(ii) Spallumcheen Indian Band By-Law No. 3, 1980, *The By-law for the Care of Our Indian Children* (the "By-law ")**

22. In or about 1979, Council concluded that it was in the best interests of Splatsin children (and thereby the Splatsin community and the Secwepemc as a whole) to articulate their laws and legal orders in relation to the protection and care of Splatsin children by way of a By-law under the Indian Act. The By-law was not intended to incorporate all of Secwepemc customary family laws but was instead directed to the intrusion by the Ministry. The By-law therefore focussed on Splatsin's legal process and jurisdiction to govern the care of Splatsin children identified to be "in need of protection." Describing in writing the responsibility under Secwepemc laws of the Splatsin community to care for Splatsin children through the vehicle of a By-Law under federal legislation was a means to protect against intrusion by the Ministry acting under provincial legislation.
23. The By-law was prepared in a consultative process with the Splatsin community, with Council reviewing drafts with the community. Based on community feedback, revisions were made. One aspect of the community consultation process was the translation of the By-law into Secwapemactsin to ensure its understanding and acceptance by the community. There was consensus that a By-law expressing Secwepemc laws for the protection and care of Splatsin children could not become law only in the language that had fractured families and caused so much harm.
24. The By-law was tailored as a response to the Province's interference with Secwepemc laws and legal orders for the protection and care of Splatsin children. With the By-law, Splatsin could begin the work of rebuilding the family unit, the centrepiece of Secwepemc culture, practices and customs.
25. The By-law is a modern expression of Secwepemc customary family laws in relation to the protection and care of Splatsin children in need of protection. Under the By-law, the Council makes decisions such as whether a Splatsin child is in need of protection and care, who is best to look after this child, how this child can stay connected with its parents, extended family and the Splatsin community, and if and when this child can be returned to his/her

parents. As the child's guardian, Council can also make decisions about the child's education, health, well-being and continuity of relationships.

26. The By-law was made by Council on June 3, 1980 and then sent to the Minister of Indian Affairs pursuant to the Indian Act. On September 3, 1980 the By-law was registered by Canada as statutory instrument SOR/80-720.
27. On October 16, 1980, the Honourable Grace McCarthy, then provincial Minister of Human Resources, and Chief Wayne Christian, Kukpi7 of Splatsin, signed a handwritten agreement by which the Province agreed to respect Splatsin's authority to assume responsibility over their children and to work with Splatsin to return Splatsin children under the Ministry's care to Splatsin authority (the "Province's Commitments").
28. In 1990, on the tenth anniversary of that agreement, Minister McCarthy wrote to Splatsin confirming the Province's Commitments.

**(d) Moving Forward After the By-law**

29. Since 1980, Splatsin has relied on the Province's Commitments to respect Splatsin jurisdiction to care for its children and Splatsin has exercised jurisdiction under Secwepemc laws as expressed in the By-law for Splatsin children in need of protection and care.
30. Splatsin's Child Welfare Program, now known as Splatsin Stsmamlt Services (the "Program"), was developed by Splatsin and operates under the direction and supervision of Council.
31. The implementation of the By-law marked the start of a new era for Splatsin in which Splatsin children in need of protection and care are placed and remain connected to their families and Splatsin in accordance with Secwepemc laws. These laws incorporate the legal principles that it is in the best interests of Splatsin children to know where they are from, understand their relationships and understand their individual roles and responsibilities as members of Splatsin and Secwepemc.
32. Implementation of the By-law began to address the harms of the Ministry's intrusion and the Sixties Scoop and to ensure such policies and actions would never again be imposed on Splatsin children, including those yet unborn. Renewing Splatsin jurisdiction under the By-



law and with the Province's Commitments also began to rebuild the family units that had been so damaged by the Ministry's intrusion and the Sixties Scoop.

33. Under the By-law, Council has the responsibility to care for Splatsin children in need of protection, including deciding whether it is in the Splatsin child's best interests to be in the care of the Ministry, which has happened from time to time.
34. Since 1980, Splatsin's population has grown approximately three-fold to nearly 900 members.
35. Many of the families of Splatsin children in care under the authority of the Council, pursuant to the By-law, are inter-generationally impacted by the Sixties Scoop, the residential school system and other government policies.
36. Since the By-law was enacted, Splatsin has developed and delivered child welfare services in a professional and culturally meaningful manner to its children and families. These services are tailored to address, in part, the inter-generational impacts identified above.
37. Since 1991, and after Minister McCarthy re-confirmed the Province's Commitments, Splatsin and the Ministry have from time to time negotiated regional protocol agreements that detail how the Ministry and Splatsin will work together in meeting the needs of Splatsin children who are or may be in need of protection.
38. The Province maintains the position that Splatsin jurisdiction is limited to Splatsin lands reserved under the Indian Act and has repeatedly taken steps and assumed authority over Splatsin children pursuant to the CFCSA (defined below), contrary to the Province's Commitments and contrary to Secwepemc laws regarding the protection and care of Splatsin children.
39. Under provincial child welfare legislation, now the *Child, Family and Community Service Act*, RSBC 1996, c. 46 (the "CFCSA" which refers to the current and all such predecessor legislation), Secwepemc laws and legal orders are not respected. Decisions on behalf of Splatsin children in need of protection and care are not made by the Council or the extended family. Instead the Ministry decides whether the Splatsin child should be

apprehended, the Ministry chooses where this child should live and with whom, and the Ministry decides on what if any contact this child should have with his/her parents, his/her extended family or with his/her Splotsin community. For Splotsin children in need of protection, it is the Ministry that makes decisions about schools, doctors, dentists and other care decisions. These actions by the Ministry are an unlawful intrusion on Splotsin's authority under Secwepemc laws.

40. The result of the CFCSA being applied to Splotsin children is that many of these children are cut off from their culture, their language, their way of life. The loss of identity is profound for the child and for the Splotsin community. These Splotsin children do not know who they are as Splotsin or as Secwepemc; they do not know where they belong. These Splotsin children lose the benefit of contact with their parents, their grandparents, their aunties and uncles, their cousins, and their local Secwepemc community which is Splotsin. These parents, grandparents, aunties, uncles and cousins, and the Splotsin community lose the benefit of knowing and teaching their Splotsin children in need of protection and care.
41. The Province's application of the CFCSA to Splotsin children interferes with the healing process and the ability of the Splotsin community to address the inter-generational impacts to each family as a result of the Sixties Scoop, the residential school system and other government policies. The community goal of rebuilding and strengthening the family unit is undermined.
42. The Province's application of the CFCSA to Splotsin children has also resulted in Splotsin having to intervene in court proceedings involving these children. As a result, Splotsin must allocate funds which should go toward the protection and care of children to engage in jurisdictional tugs-of-war with the Province, inside and outside the Provincial Court, to try to ensure Secwepemc laws are respected and the best interests of Splotsin children are taken into account as articulated in the By-law and pursuant to Secwepemc laws. These tugs-of-war have caused and are causing harm and loss to Splotsin and to Splotsin children, including as more particularly set out in paragraphs 40 and 41 above.

**(e) International Framework**

43. In 2007, the General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP"), providing international norms and values for the survival, dignity and well-being of Indigenous Peoples. UNDRIP was then endorsed by the federal government in November, 2010. UNDRIP affirms *inter alia* the rights of self-determination, including self-government (Articles 3 and 4); maintenance and strengthening of distinct institutions and programs (Articles 5, 18, 20(1), 23, 33(2) and 34); education (Article 14); and traditions, customs, cultural development and cultural heritage (Articles 3, 9, 11(1), 12, 13, 15 and 31).
44. UNDRIP also provides that Indigenous People have the rights to life, physical and mental integrity, liberty and security of the person, and shall not be subjected to the forcible removal of their children (Article 7), nor subject to forced population assimilation or destruction of their culture, or forced population transfer (Article 8(2)). Indigenous People have the right to improvement of their social conditions, and States are to pay particular attention to the rights and special needs of Indigenous children (Articles 21 and 22).
45. The *United Nations Convention on the Rights of the Child (1989)* (*Convention*) recognizes the human rights of all children at all times. Those rights include protection from harm and provision of services. Also, each indigenous child has the right, in community with his or her indigenous group, to culture, religion and language (Article 30). In 1991, Canada ratified the *Convention*.
46. The Province's application of the CFCSA to Splatstin children does not accord with international norms and values.

**Part 2 - RELIEF SOUGHT**

The Plaintiff seeks the following orders:

- (a) a declaration that pursuant to the laws and legal orders of the Secwepemc governing the protection and care of children, Splatstin has jurisdiction and authority over Splatstin children and that the exercise of those laws and jurisdiction is an

inherent Aboriginal right which pre-existed and survived the assertion of Crown sovereignty and finds expression in the common law and in section 35(1) of the *Constitution Act, 1982*;

- (b) a declaration that the Province has no jurisdiction to infringe or interfere with Secwepemc laws applied and enforced by Splatsin for the protection and care of Splatsin children;
- (c) a declaration that, in the absence of a determination by Splatsin under Secwepemc laws that any Splatsin child should be in the care of the Province, the *Child, Family and Community Service Act*, RSBC 1996, c. 46 is in conflict with Secwepemc laws and is of no force and effect in respect of Splatsin children;
- (d) in the alternative, a declaration that the *Child, Family and Community Service Act* unjustifiably infringes Splatsin's Aboriginal rights pursuant to s. 35 of the *Constitution Act, 1982* to make decisions for the protection and care of Splatsin children in accordance with Secwepemc laws and pursuant to s. 52 of the *Constitution Act, 1982* is of no force and effect, insofar as it purports to allow the Province to assume authority over Splatsin children without Splatsin consent;
- (e) a declaration that the Province has failed to act diligently to implement the Province's Commitments in a manner consistent with the honour of the Crown;
- (f) damages;
- (g) costs;
- (h) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79;
- (i) such further and other relief as this Court deems just.

### Part 3 - LEGAL BASIS

1. Splatsin relies upon the doctrine of continuity which recognizes that when the settlers arrived, the inherent and pre-existing laws and legal orders of Indigenous Peoples would be respected.
2. As Secwepemc laws and legal orders for the protection and care of Splatsin children were never surrendered by treaty, extinguished by the Crown or incompatible with the assertion of Crown sovereignty, they formed part of the common law, and after 1982, were constitutionally entrenched by section 35(1) of the *Constitution Act, 1982*.
3. Secwepemc laws and legal orders for the protection and care of Splatsin children are, and always have been, integral to Secwepemc culture and society and to Splatsin, as a Secwepemc community. These laws and legal orders applied by Splatsin, have, since pre-contact, been essential to the dignity, survival and well-being of Splatsin as a community of the Secwepemc and to the well-being of Splatsin children.
4. Splatsin protection and care for its children, under the By-law, is an expression of the laws and legal orders of the Secwepemc, ensuring that children are protected and cared for in accordance with Secwepemc laws. As it relates to Splatsin children, Splatsin is the Secwepemc community responsible for applying and enforcing these laws.
5. The application of the CFCSA to Splatsin children is an intrusion into Council's role as guardian of Splatsin children in need of care, pursuant to Secwepemc laws. As a result, the Province lacks jurisdiction to apply the CFCSA over matters concerning the protection and care of Splatsin children, unless the Province has the consent of Splatsin.
6. In the alternative, the Province lacks jurisdiction to apply the CFCSA over matters concerning the protection and care of Splatsin children, because in applying the CFCSA, the Ministry is purporting to exercise its discretion and make decisions in a manner which interferes with Splatsin's right to make decisions in accordance with Secwepemc laws regarding the protection and care of Splatsin children. The exercise of decision-making under Secwepemc laws is integral to the identity and well-being of Splatsin and Splatsin children, including access to their families, community and culture. The application of the

CFCSA to the protection and care of Splatsin children is an unjustified infringement of the Aboriginal right to make decisions for the protection and care of Splatsin children in accordance with Secwepemc laws.

7. Further, the application of the CFCSA to Splatsin children, without the consent of Splatsin, is a breach of the honour of the Crown and the Province's Commitments made to Splatsin, which Splatsin has continuously relied on since 1980.
8. Finally, the application of the CFCSA to Splatsin children, without the consent of Splatsin, is contrary to the norms and values embodied in the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Convention on the Rights of the Child*.

Plaintiff's address for service: c/o 422 - 1080 Mainland Street  
Vancouver, BC V6B 2T4

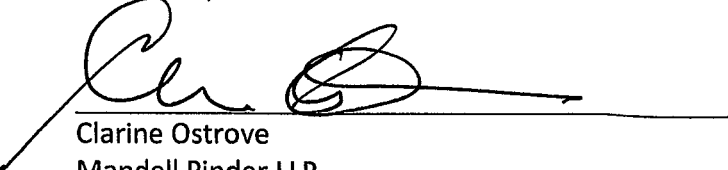
Fax number address for service (if any): 604.681.0959

E-mail address for service (if any): clo@mandellpinder.com

Place of trial: Vancouver, British Columbia

The address of the registry is: Vancouver Law Courts  
800 Smithe Street  
Vancouver, B.C. V6Z 2E1

Date: October 13, 2015



Clarine Ostrove  
Mandell Pinder LLP  
Barristers and Solicitors  
422 - 1080 Mainland Street  
Vancouver, BC V6B 2T4  
Tel.: 604.681.4146 Fax: 604.681.0959  
Counsel for the Plaintiff

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.

**APPENDIX**

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This claim challenges British Columbia's application of the *Child, Family and Community Service Act* to Splatsin children determined to be in need of protection as an impermissible intrusion of Secwepemc laws and legal orders under the common law and s. 35 of the *Constitution Act, 1982*, and as an unjustified infringement of Aboriginal rights protected by s. 35 of the *Constitution Act, 1982*.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law



- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

*Constitution Act, 1982*

*Child, Family and Community Service Act, RSBC 1996, c. 46*