



Wednesday, April 6, 2011

TO: Squamish Nation Members

FROM: Chiefs and Council

RE: 3rd Update regarding Capilano Mobile Park Litigation

As you are aware, in early December 2010 Squamish Nation Chiefs and Council filed a claim on behalf of Membership in the Supreme Court of British Columbia to regain control of lands located between the Capilano River and the Lions Gate Bridge on Capilano IR No. 5, where the Capilano Mobile Park was located. We reported on this in updates to the membership dated December 10, 2010 and January 26, 2011, both of which are available at www.Squamish.net. Also see appendices A and B (Attached).

The Court has now ruled in favour of the Squamish Nation and has confirmed that this land belongs to the Squamish Nation membership as a whole. The entire membership is entitled to benefit from it.

The Trailer Park business had been operated by a partnership of Dennis Lloyd Baker, Franklin James Baker, Darlene Violet Wilson Garrick, Pamela Constance Baker, Wayne Charles Baker and Wade Stephen Baker, under a permit, which expired in October 2008. The partnership refused to enter into the new permit that the Nation offered. The Trailer Park business brought in revenues in the range of \$1.5 to \$1.8million each year and the partnership had been paying 35% of that to the Nation for the right to use this land, but since May 2010 they have been keeping all of the rents and refusing to pay anything to the Nation.

In addition to confirming that the land belongs to the Squamish as a whole, the judge found that the partnership and its members owe the Squamish Nation:

- **\$497,403.29**, which includes unpaid rent from May 16, 2010 to December 1, 2010 and damages for trespass after the partnership refused to turn the land back over the Squamish Nation after December 1, 2010;
- **additional damages** for trespass for February and part of March (to be assessed);

and

(continued over...)

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- **full legal costs** incurred by the Squamish Nation to recover the land for the membership. (Normally, courts only award a portion of the actual legal costs but here, because of the misconduct of the partnership in the course of the litigation, the court has imposed an additional costs penalty on them.).

Thus, based on the court decision, the partnership, through their conduct, have cost the Squamish Nation Membership plus or minus \$1Million in lost revenue and costs of getting the land back. The Nation will attempt to recover the money owing from the partnership, however, the Nation has learned that the partnership business account was emptied in December and divided among the members of the partnership.

Since this land belongs to the whole Squamish Nation, Chiefs and Council have a legal obligation to manage the lands for the benefit of all Nation Members. Chiefs and Council cannot allow a business to make money from the Nation's land without ensuring that the Membership receives a benefit in return. Since the partnership was denying the Membership this legal entitlement, Chiefs and Council had absolutely no choice but to instruct the Nation's lawyers to bring this claim.

The receiver/manager who was appointed by the court in January, 2011 to manage the trailer park until trial has now been discharged and the Nation has taken over the land. For the time being, the Squamish Nation will continue to use the land as a mobile home and RV park until detailed plans are put in place. **The name of the mobile home and RV park is NOW Capilano River RV Park.** As noted, the land generates revenues in the range of \$1.5 to \$1.8million per year as a trailer park, much of which is profit that will now go to the Squamish Nation.

Membership will have a direct say in how the lands will ultimately be used in the future and no new development will take place without the direct involvement and input of the Squamish Nation membership.

A timeline showing significant events relating to the trailer park at this location is attached.

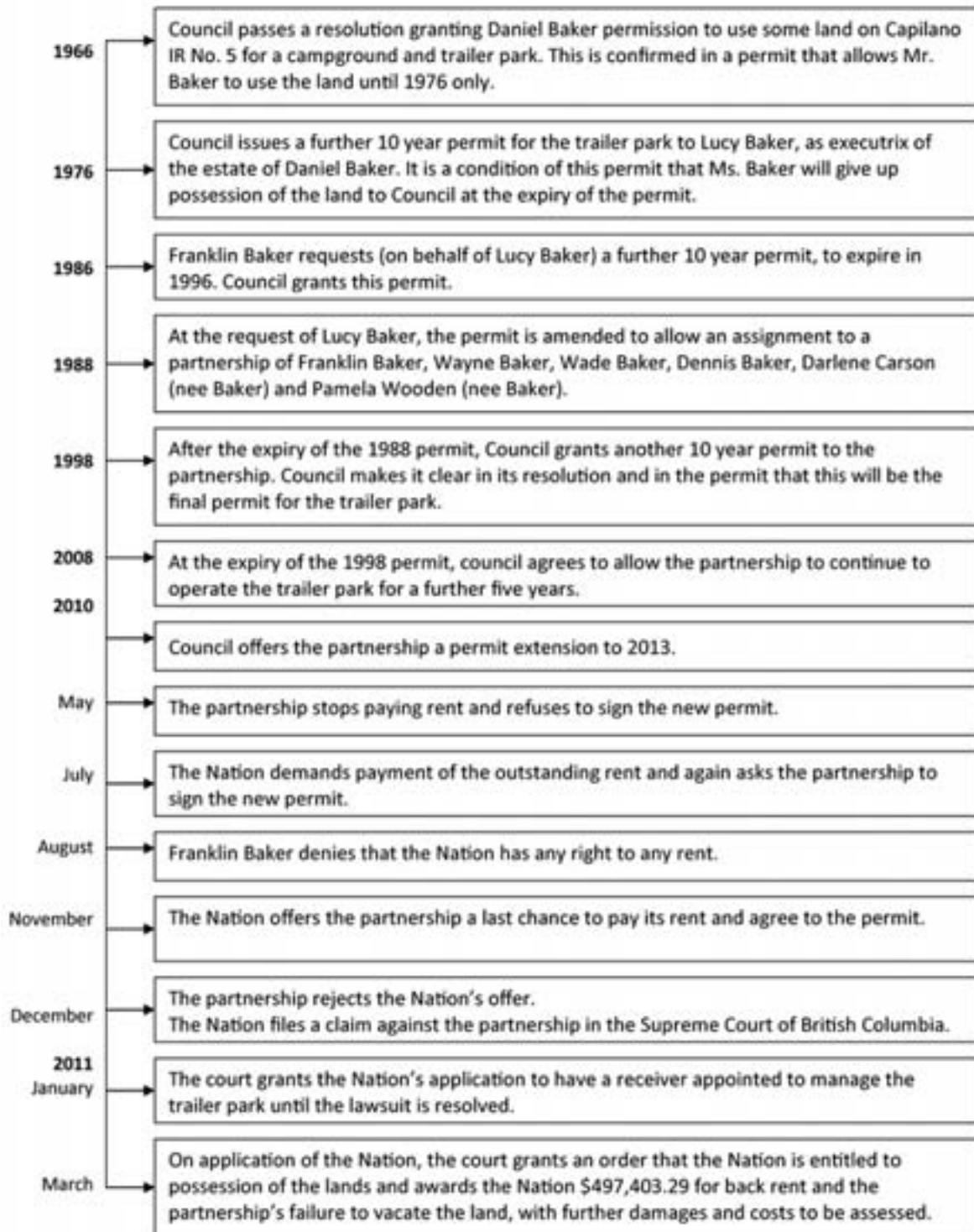
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Capilano RV Park – Timeline of Events



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Sincerely,
SQUAMISH NATION
 Chiefs & Council



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– Appendix A –

Second Notice:

Explanation of Capilano Mobile Park Litigation

Dated January 26, 2011



SECOND NOTICE

Wednesday, January 26, 2011

TO: Squamish Nation Members

RE: Explanation of Capilano Mobile Park Litigation

As you are aware, in early December 2010 Squamish Nation Chiefs and Council filed a claim on behalf of Membership in the Supreme Court of British Columbia to regain control of lands located between the Capilano River and the Lions Gate Bridge on Capilano IR No. 5, where the Capilano Mobile Park is located.

This land belongs to the Squamish Nation as a whole and the entire membership is entitled to benefit from it. The Trailer Park had been operated under a permit, which expired in October 2008. The Partnership of the Trailer Park refused to enter into the new permit that the Nation offered. The Trailer Park brings in revenues of at least \$1.5 to \$1.8 million each year and its operators had been paying 35% of that to the Nation for the right to use this land, but since May 2010 they have been keeping all of the rents and not paying anything to the Nation.

Since this land belongs to the whole Squamish Nation, Chiefs and Council have a legal obligation to manage the lands for the benefit of all Nation Members. Chiefs and Council cannot allow a business to make money from the Nation's land without ensuring that the Membership receives a benefit in return. Since the Partnership is denying the Membership of this legal entitlement, Chiefs and Council had absolutely no choice but to instruct the Nation's lawyers to bring this claim.

It will take some time before the claim is finally resolved. The Nation's lawyers applied to the court to stop the Trailer Park Partnership from being able to continue to collect and keep money that should be going to the Nation until the court case is resolved. This application was heard in court on January 14, 2011.

Representatives of the Trailer Park Partnership appeared at the January 14th hearing and behaved in a way that was disrespectful of the court process. The Judge totally rejected their arguments and granted the order on the terms sought by the Nation.

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The order confirms the Squamish Nation’s right to lawful possession of the Trailer Park lands until the Nation’s claim is resolved by the court. The court also ordered that a neutral party (called a “receiver”) be appointed to manage the Trailer Park for the time being. The role of the receiver will be to run the Trailer Park and hold any revenues in trust, to be dealt with once the court case is over.

On January 26, 2011, the Partnership of the Trailer Park refused to obey the order and give up possession of the Trailer Park. They also refused to permit the receiver to run the business, as the court ordered. It is illegal to disobey a court order in this way. To ensure that the court’s order is respected, the West Vancouver Police were forced to arrest several people who were blocking the receiver’s access to the Mobile Park office and preventing the Nation from taking possession of the land.

The Trailer Park Partnership and their representatives have been extremely uncooperative and disrespectful in their dealings with the Nation and its legal counsel. They have delivered a large number of documents that are of no legal effect and have no status with the courts. The Partnership’s conduct, lack of co-operation and lack of respect for the rights of the Squamish Nation, as a whole, has taken significant time and financial resources of the Nation to deal with.

Sincerely,
SQUAMISH NATION
 Chiefs & Council



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– Appendix B –

First Notice:

Explanation of Capilano Mobile Park Litigation

Dated December 10, 2010



December 10, 2010

To Squamish Nation Membership

RE: Explanation of Capilano Mobile Park Litigation

Squamish Nation Chiefs and Council on behalf of Membership have filed a claim in the Supreme Court of British Columbia to regain control of the lands located between the Capilano River and the Lions Gate Bridge on Capilano IR No. 5, where the Capilano Mobile Park is located. Attached is a 10 page Notice of Civil Claim.

Squamish Nation Chiefs and Council have allowed Squamish Nation Members the Trailer Park to operate the Trailer Park on the Squamish land for 44 years. Until last spring (May 26, 2010), the Trailer Park operators paid the Nation in exchange for using the land. Chiefs and Council has clearly stated that permitting the use of the land for the Trailer Park did not give the Trailer Park operators any permanent rights to the land. The parcel of land situated in a prime location, has the potential to generate more funds that will benefit our people as a collective.

The operators of the Trailer Park had agreed to a 10 year permit that expired October, 2008. Chiefs and Council met with the Trailer Park operators at a duly convened Council meeting to discuss renewing the permit. The decision was Chiefs and Council authorized the permit for an additional 5 years, with a 2 year notice period. Under the permit, the Trailer Park operators paid a percentage of the money each month to the Nation from the operations of the RV Park.

There has been a breakdown in the business relationship with the Nation and The Trailer Park operators they paid rent until May 26, 2010. After May 26, 2010, they refused to make any further payments to the Nation and refused to sign a new permit. The Nation has tried to discuss this issue with the operators but the operators have declined.

As we know, the parcel of land where the Trailer Park is located belongs to the Nation as a whole. Chiefs and Council have a legal obligation to manage the lands for the benefit of all Nation Members. Chiefs and Council cannot allow a business to make money from the Nation's land without paying anything to the Nation in exchange.

In November, the Nation made a final offer to the Trailer Park operators, asking for payment of the rent owing and that they sign the new permit. After the Trailer Park operators rejected that offer, the Nation brought the claim in court to regain control of the land so that it could be used for the benefit of all the Nation Members.

Chiefs and Council are awaiting response from the Trailer Park Operators no later than December 24, 2010.

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Sincerely,
 SQUAMISH NATION
 Chiefs & Council

 Arroy Baker K'etkimtn	 Deborah Baker	
 Julie Baker Sewélhchaliya	 Pamela Baker Hi-mi-ka-las	 Chief Ian Campbell Xálek/Sekyú Siyam
 Carla George Kaitelut Kwelaw'kw	 Dale Harry Xwa-xwelkn	 Chief Gilbert Jacob KASeltn Siyam
 Krisandra Jacobs	 Byron Joseph Ts'elkwalen Siyam	 Joshua Joseph Skwetsi7meibow
 Christopher Lewis Syetáxtn	 Ann Whonnock Syegwáliya	 Dennis Joseph gwéchtáal
 Chief Bill Williams Telásemájn Siyam	 Chief Richard Williams Xwítzwelacha Siyam	

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S=107876

NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CHIEFS AND COUNCIL OF THE SQUAMISH INDIAN
BAND, and BYRON JOSEPH, on his own behalf and on behalf of
the SQUAMISH INDIAN BAND and all members of the
SQUAMISH INDIAN BAND

PLAINTIFFS

AND:

CAPILANO MOBILE PARK, a partnership, and DENNIS
LLOYD BAKER, FRANKLIN JAMES BAKER, DARLENE
VIOLET BAKER, PAMELA CONSTANCE BAKER PACK,
WAYNE CHARLES BAKER and WADE STEPHEN BAKER,
carrying on business as Capilano Mobile Park

DEFENDANTS

NOTICE OF CIVIL CLAIM

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

This action has been started by the plaintiff(s) 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(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

1. The plaintiff Squamish Indian Band, also known as the Squamish Nation (and hereinafter referred to as the “Squamish Nation”) is a Band as defined by the *Indian Act*, R.S.C. 1985, c. I-5 with an office at 320 Seymour Boulevard, North Vancouver, BC V7J 2J3.
2. The plaintiff Byron Joseph is an Indian as defined by the *Indian Act*, a member of the Squamish Nation, and an elected member of the Council of the Squamish Nation. He sues on his own behalf and on behalf of the Squamish Nation and the members of the Squamish Nation.
3. The Council of the Squamish Nation (hereinafter the “Council”) is the “council of the band” as it is defined by the *Indian Act*, elected pursuant to the custom of the Squamish Nation.
4. The defendant Capilano Mobile Park is a partnership of the defendants Dennis Lloyd Baker, Franklin James Baker, Darlene Violet Baker, Pamela Constance Baker Pack, Wayne Charles Baker and Wade Stephen Baker, carrying on the business of operating a mobile home and recreational vehicle park (the “Trailer Park”), and for that purpose maintains a business address at 295 Tomahawk Avenue, North Vancouver, BC V7P 1C5.

5. The Trailer Park is located on Capilano Indian Reserve No. 5, which is a reserve as defined by the *Indian Act* set apart for the use and benefit of the Squamish Nation. More particularly, the Trailer Park is located on the land indentified on Schedule A (hereinafter the “Land”).
6. The Land has never been:
 - (a) allotted to any member of the Squamish Nation under s. 20 of the *Indian Act*;
 - (b) surrendered or designated under s. 38 of the *Indian Act*; or
 - (c) the subject of any permit under s. 28(2) of the *Indian Act*.
7. Prior to October 14, 2008, the defendants operated the Trailer Park under an agreement between the Council and the Defendant Capilano Mobile Park (hereinafter the “Agreement”). Under the Agreement, the defendants paid the Council, on a monthly basis, a percentage of the net revenue of the Trailer Park. The Agreement expired on October 14, 2008.
8. The defendants failed to deliver up possession of the Lands and premises on October 14, 2008.
9. Following the expiration of the Agreement, the Council offered to the defendants a new agreement (the “New Agreement”), under which the defendants would be allowed to remain in possession of the Lands and to continue to operate the Trailer Park.
10. Pending consideration of the New Agreement, the defendants remained in possession of the Lands, continued to operate the Trailer Park and, initially, continued to make monthly payments to the Squamish Nation.
11. Since May 26, 2010, the defendants have not made any payments to the Squamish Nation and have refused to engage in any discussions with the Council or its representatives with respect to the New Agreement or the operation of the Trailer Park.

12. The plaintiffs have demanded that the defendants deliver up possession of the Lands and premises.
13. The defendants have failed or refused to deliver up possession of the Lands and premises and continue to operate the Trailer Park thereon.
14. The defendants threaten and intend to remain in unlawful possession of the Lands and premises.
15. As a result of the defendants' wrongful interference with the plaintiffs' right to possession, the plaintiffs have been deprived of the use and enjoyment of their lands and premises and suffer and continue to suffer loss and damages.

Part 2: RELIEF SOUGHT

1. The plaintiffs claim a declaration that the Lands are unallotted reserve lands set apart for the use and benefit of the Squamish Nation and that the plaintiffs are entitled to possession thereof as against the defendants.
2. The plaintiffs claim against the defendants an Order for possession of the Lands and premises.
3. The plaintiffs claim an interlocutory injunction to restrain the defendants from remaining in possession of the Lands and from continuing to operate the Trailer Park thereon.
4. The plaintiffs claim against the defendants mesne profits of the Lands from May 15, 2010 until possession is delivered up or, in the alternative, an account of the mesne profits and payment to the plaintiff of the monies found to be due and owing from the defendants.
5. The plaintiffs claim against the defendants general and special damages.
6. The plaintiffs claim against the defendants costs.
7. The plaintiffs claim against the defendants interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

8. The plaintiffs claim such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

1. The Lands are part of a reserve set apart for the use and benefit of the Squamish Nation. It is a fundamental characteristic of a band's interest in reserve land that the interest is held in common with all members of the band; it is not an interest conferred upon any individual member of the band: *Indian Act*, R.S.C. 1985, c. I-5, s. 2; *Joe v. Findlay* (1981), 122 D.L.R. (3d) 377 at 379 (B.C.C.A); *Lower Nicola Indian Band v. Trans-Canada Displays Ltd.* 2000 BCSC 1209 at para. 127.
2. Under s. 20(1) of the *Indian Act*, no Indian may lawfully possess land in a reserve unless the land has been allotted by the band council and the Minister of Indian Affairs has approved the allotment: *Joe v. Findlay, supra*, at 379-80; *Lower Nicola v. Trans-Canada, supra*, at para. 131. Neither has happened here.
3. Given that the overall scheme of the *Indian Act* is to protect a band's collective interest in a reserve: *The Queen v. Devereaux* (1965), 51 D.L.R. (2d) 546 (S.C.C.) at 550, the requirements of s. 20(1) of the *Indian Act* have been strictly enforced by the courts: *Lower Nicola v. Trans-Canada, supra*, at para. 133.
4. Where a band member purports to possess land in a reserve in contravention of a decision of the band council, that person is in trespass: *Joe v. Findlay, supra*, at 381; *Lower Nicola v. Trans-Canada, supra*, at para. 132.
5. The Squamish Nation has not allotted the Lands to the defendants or any of them, or otherwise, nor has the Minister of Indian Affairs or the Governor General consented to the acquisition of any interest in the Lands by the defendants, or any of them or otherwise. As such, there is no means by which the defendants, or any of them, could be in lawful possession of the Lands: *Indian Act, supra*, s. 20(1). The defendants are, thus, wrongfully in possession of lands which have been set apart by Her Majesty for the use and benefit of the Squamish Nation, and of which the plaintiffs are entitled to possession.

Plaintiffs' address for service:

RATCLIFF & COMPANY LLP
500- 221 West Esplanade
North Vancouver, BC, V7M 3J3

Attn: John R. Rich

Fax number address for service (if any):

(604) 988 1452

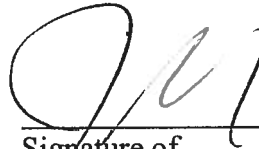
Place of trial:

Vancouver, BC

The address of the registry is:

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

Date: 01/Dec/2010



Signature of
 lawyer for plaintiffs

John R. Rich

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:

An action for the recovery of land.

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:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Indian Act; Supreme Court Civil Rules; Court Order Interest Act

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CHIEFS AND COUNCIL OF THE SQUAMISH INDIAN
BAND, and BYRON JOSEPH and on his own behalf and on
behalf of the SQUAMISH INDIAN BAND and all members of
the SQUAMISH INDIAN BAND

PLAINTIFFS

AND:

CAPILANO MOBILE PARK, a partnership, and DENNIS
LLOYD BAKER, FRANKLIN JAMES BAKER, DARLENE
VIOLET BAKER, PAMELA CONSTANCE BAKER PACK,
WAYNE CHARLES BAKER and WADE STEPHEN BAKER,
carrying on business as Capilano Mobile Park

DEFENDANTS

NOTICE OF CLAIM

John R. Rich

RATCLIFF & COMPANY LLP
BARRISTERS & SOLICITORS
Suite 500, 221 West Esplanade
North Vancouver, B.C.
V7M 3J3

Attention: John R. Rich
File No.: 96-0084-001