

JAN 13 2022

No. **S-220184**
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**SNUXYALTWA also known as DERIC SNOW, on behalf of himself and in his
capacity as a Nuxalk Hereditary Chief on behalf of all members of the family of
SNUXYALTWA**

PLAINTIFF

AND:

**ROYAL BRITISH COLUMBIA MUSEUM and
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA**

DEFENDANTS

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

The Parties

1. The Plaintiff (“Snuxyaltwa”) is a hereditary chief of the Nuxalk people. Snuxyaltwa brings this claim on his own behalf and on behalf of all members of his family.
2. The Nuxalk are an aboriginal people within the meaning of s. 35(1) of the *Constitution Act*, 1982.
3. The name of Nuxalk hereditary chiefs, including the name “Snuxyaltwa”, passes from generation to generation within the family line through potlach ceremonies. Snuxyaltwa is responsible for and represents all members of his family.
4. The Plaintiff acquired the name Snuxyaltwa in or about 1993 after a potlach. The Plaintiff also carries the name Yulm, which he acquired from a potlach in or about 1981.
5. The Snuxyaltwa family originates from South Bentinck and the ancestral village of Talleomy. The Nuxalk peoples migrated from this area after the smallpox epidemic in the early 1900s.
6. The Defendant (the “Museum”) is a corporation established pursuant to s. 2 of the *Museum Act*, S.B.C. 2003, c. 12 (the “*Act*”). Pursuant to s. 3 of the *Act*, the Museum is for all purposes an agent of the provincial government.
7. The Defendant, Her Majesty the Queen in Right of British Columbia is the Provincial Crown (the “Province”) and is the principal of the Museum.

The Totem Pole

8. The Museum is in possession of a longhouse entrance pole (the “Totem Pole”) carved by Louie Snow, the Plaintiff’s great-grandfather, who was the hereditary chief of the family of Snuxyaltwa and carried that name while he was alive.
9. The Totem Pole was originally raised in front of the Snuxyaltwa’s family longhouse in Talleomy. In the early 1900s, the Totem Pole was taken by the Museum, or alternatively sold to the Museum under duress in the midst of the smallpox epidemic.
10. The Totem Pole was displayed in the Museum up until January 2022 on the third floor in the First Peoples Gallery.

11. In January 2022, the third floor galleries closed as part of a “decolonization” and “modernization” effort. It is unknown where the Totem Pole now resides.
12. The Totem Pole is of great cultural and spiritual importance to the Plaintiff and his family.

The Promise to Return the Totem Pole

13. On or about October 11, 2019, the Plaintiff, along with a delegation of other Nuxalk hereditary chiefs and Nuxalk peoples, travelled to the Museum from their territory demanding the return of the Totem Pole and asserting that he was the rightful owner of the Totem Pole.
14. The Plaintiff was greeted by Jack Lohman, then Chief Executive Officer of the Museum, who acceded to the Plaintiff’s demand, and promised, face-to-face, the return of the Totem Pole to the Chief and his family. This meeting and promise was widely reported in the media.

The Museum Reneges on its Promise

15. Since the promise to repatriate the Totem Pole in October 2019, the Museum has made no meaningful progress to return the Totem Pole despite repeated requests by the Plaintiff.
16. The Museum has pointed to logistical challenges such as the size of the Totem Pole and the difficulty from removing it from the third floor as a reason for the delay, but has offered no solutions and no explanation as to how the Totem Pole was moved to the third floor in the first place, or how the Totem Pole will be moved now that the third floor of the Museum is closed.
17. The Museum has effectively reneged on its promise to return the Totem Pole by its dilatory conduct.

Part 2: RELIEF SOUGHT

1. A declaration that the Plaintiff, as hereditary chief, has ownership over the Totem Pole.
2. An order for the return and delivery of the Totem Pole back to the Plaintiff.
3. General damages.
4. Special damages.
5. Aggravated damages.
6. Punitive damages.
7. Costs, assessed as special costs.
8. Such further and other relief as counsel may advise and this Honourable Court may allow.

Part 3: LEGAL BASIS

Breach of Fiduciary Duty

1. The Defendants owe the Nuxalk people, including the Plaintiff and his family, a fiduciary duty.
2. The Defendants are also bound by the honour of the Crown – a constitutional imperative that governs all of the government’s dealings with Indigenous peoples – including the Plaintiff and his family.
3. The Museum publically promised to repatriate the Totem Pole, but has made no substantive effort to fulfil that promise. The Museum has reaped the benefits of displaying the Totem Pole in its galleries, as well as the positive press from the public promise to return the Totem Pole. Yet it continues to deny the Plaintiff and his family lawful possession of the Totem Pole. The Museum’s conduct is dishonourable and in breach of the Museum’s fiduciary duty to the Plaintiff and his family.
4. The Province as principal is liable for the Museum’s conduct.

Conversion

5. The Plaintiff is the owner of the Totem Pole, either from October 11, 2019 onwards when the Museum acceded to the Plaintiff’s request to return the Totem Pole, or alternatively, the Totem Pole was unlawfully taken from the Snuxyaltwa family in the early 1900s and the Museum was never the lawful owner of the Totem Pole.
6. The Museum continues to without lawful justification deprive the Plaintiff and his family of the Totem Pole with the intention of exercising a permanent or temporary dominion over it.
7. The Museum by its actions and inactions have converted the Totem Pole to its own use and have wrongfully deprived the Plaintiff and his family of it.
8. The Province as principal is liable for the Museum’s conduct.

Breach of *UNDRIP*

9. The Defendants are in breach of the *Declaration of the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44, which affirms the application of the *United Nations Declaration of the Rights of Indigenous Peoples* (“*UNDRIP*”) and incorporates it into domestic provincial law.
10. Articles 11 and 12 of *UNDRIP* provide:

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and

customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

11. The Defendants, through its failure to repatriate the Totem Pole, is in breach of Articles 11 and 12 of *UNDRIP*.

Damages

12. The Plaintiff and his family have suffered cultural and spiritual loss from the unlawful removal and retention of the Totem Pole. Such loss ought to be compensated in damages.

13. Further, the Plaintiff has incurred additional costs in his efforts to repatriate the Totem Pole, including from his efforts to have the Museum fulfill its promise.

14. The Museum knows of the great cultural and spiritual significance of the Totem Pole to the Plaintiff and his family, yet continues to deprive them of possession of the Totem Pole. The Museum's conduct is particularly high-handed and oppressive and has heightened the harm suffered by the Plaintiff and his family. The Plaintiff claims aggravated damages.

15. The Museum knows it owes a fiduciary duty and must act in accordance with the honour of the Crown, yet has reneged on its public promise to return the Totem Pole. This conduct is blatant and egregious and deserving of rebuke from the Courts. The Plaintiff claims punitive damages.

Plaintiff's address for service:

Arvay Finlay LLP
1512 – 808 Nelson Street
Box 12149, Nelson Square
Vancouver, BC V6Z 2H2

Fax number address for service (if any): 1.888.575.3281

E-mail address for service (if any): dwu@arvayfinlay.ca

Place of trial: Vancouver, British Columbia

The address of registry is: 800 Smithe Street
Vancouver, BC V6Z 2C5



Dated: 13 Jan 2022

Signature of lawyer for plaintiff
David W. Wu

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

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This claim is about the repatriation of a totem pole.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

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:

[Check all boxes below that apply to this case]

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

Part 4: *[If an enactment is being relied on, specify. Do not list more than 3 enactments.]*

Declaration of the Rights of Indigenous Peoples Act, S.B.C. 2019, c. 44