



Court File No. **PEN-S-S-49351**  
No.  
Penticon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE SOUTHERN INTERIOR LAND TRUST SOCIETY

PLAINTIFF

AND:

SHAWN LOCKHART, JOHN DOE & JANE DOE

DEFENDANTS

### **NOTICE OF CIVIL CLAIM**

**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 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

1. The Plaintiff, The Southern Interior Land Trust Society, (“SILT”) is a registered not-for-profit charitable organization under the *Societies Act*, SBC 2015 c.18, with an address for service of 203 – 383 Ellis Street, Penticton, B.C. V2A 4L8.
2. The Defendant, Shawn Lockhart, School Principal, has an address for service of 129 Chase Road, Christina Lake, B.C.
3. The Defendant John Doe has an unknown address for service.
4. The Defendant Jane Doe has an unknown address for service.
5. The mission of SILT is to create a legacy of protected, important habitats for all living things by acquiring and conserving in perpetuity, ecologically significant gems of wildlife habitat in BC's southern interior. SILT currently owns a few hundred acres of land, inclusive of approximately 50 acres of wetland, forest woodland, and pond conservation property near Grand Forks, British Columbia (the “Edwards Pond Property”).
6. In or around April 1991, SILT purchased the Edwards Pond Property with a legal description of:

Lot 30 DL 499 & 616, SDYD, Plan 726 except Plan H18290.
7. Mr. Lockhart, John, and/or Jane Doe, from time to time, access the Edwards Pond Property from a property with a civic address of 1215 Manly Meadows Road and a legal description of:

PID: 012 – 109 - 321  
Lot 56 DL 499 & 616, SDYD Plan 729

(the “Manly Meadows Property”).
8. For decades, Lockhart family interests have owned or occupied the Manly Meadows Property. It is currently owned by Elizabeth Rose Lockhart.
9. On or around March 31, 2022, Mr. Lockhart, John Doe, and/or Jane Doe attended at the Edwards Pond Property using an ATV with a trailer attached, as well as a Jeep with a trailer attached. While at the Edwards Pond Property, Mr. Lockhart, John Doe, and/or Jane Doe cut down a large fir tree, cut the tree into firewood, and removed the wood from the Edwards Pond Property (the “Incident”).

10. On March 31, 2022, SILT, by way of its Executive Director, reported the Incident to the Grand Forks detachment of the RCMP.
11. On or around April 5, 2022, a Director of SILT observed by way of cameras on the Edwards Pond Property, an ATV attending at the same site where the Incident occurred (the “ATV Trespass”).
12. On April 9, 2022, SILT, by way of its Executive Director, reported the ATV Trespass to the Grand Forks detachment of the RCMP.
13. The timing of the Incident coincided with the nesting period of bird species including Great Blue Heron and Bald Eagle on the Edwards Pond Property. The Great Blue Heron and Bald Eagle are both known to nest on the Edwards Pond Property, in proximity to the tree. Such nests are protected under the *Wildlife Act*, RSBC 1996, c. 488 (the “*Wildlife Act*”), and the disturbance of these and other nesting birds is prohibited and considered an offence pursuant to the *Wildlife Act* at s. 34.
14. The operation of motor vehicles, a chainsaw, and the intense human activity of splitting wood near an occupied and active bird nesting area can disrupt and disturb these and other nesting birds, which is prohibited under the *Wildlife Act* and are activities not permitted on the Edwards Pond Property.
15. The Edwards Pond Property is privately-owned but kept open to the public for walk-in access for nature, and wildlife, related recreation, provided such use is safe, legal, and protects the integrity of the land.
16. For decades, a large information sign on Manly Meadows Road, prominently located on the access route to the Manly Meadows Property, has described the Edwards Pond Property as acquired by SILT for “preservation of habitat” (the “Original Sign”).
17. In or around April 2019, following a motor vehicle trespass originating from the Manly Meadows Property, the Edwards Pond Property boundary nearest to the Manly Meadows Property was also signed by SILT, with a SILT “Conservation Property Boundary” sign (the “Second Sign”).
18. In August 2020, finding the Second Sign down and damaged, SILT replaced it with a more direct “Motorized Vehicles not Permitted” sign (the “Third Sign”). The Third Sign remained in place through 2021. The day following the Incident, on April 1, 2022, SILT saw the Third Sign was missing and the sign’s post was cut.
19. Mr. Lockhart knew, or ought to have known, that the Edwards Pond Property belonged to SILT.

20. It is SILT's requirement that permission be granted by SILT for any motorized vehicle access to the Edwards Pond Property.
21. At no point did SILT receive or authorize a request for any attendance at the Edwards Pond Property by Mr. Lockhart, John Doe, and/or Jane Doe.
22. It is SILT's requirement that permission be granted by SILT for any removal of trees or any vegetation from the Edwards Pond Property.
23. At no point did SILT receive or authorize a request for the removal of trees or any vegetation from the Edwards Pond Property by Mr. Lockhart, John Doe, and/or Jane Doe.
24. There is no easement, express or implied, granted over the Edwards Pond Property for use by the Manly Meadows Property.
25. The tree destroyed in the Incident was a habitat for wildlife and may have held nests for birds. The tree was a significant wildlife habitat feature on the Edwards Pond Property. Woodpecker foraging holes were observable on the tree.
26. The loss suffered by the Edwards Pond Property due to the Incident is greater than the monetary value of the wood derived from the tree; the loss suffered includes intangible losses of habitat for countless wildlife species for many decades more to come.
27. Ecological damage suffered at the Edwards Pond Property is tangible and real, not merely an amenity value.
28. The Incident is contrary to SILT's conservation purpose and has greatly diminished the wildlife habitat value of the Edwards Pond Property, now and for many decades to come.
29. The Edwards Pond Property provides many ecological services, including nesting, foraging, security, and breeding habitats for wildlife, shade, community green space, flood prevention, and carbon sequestration.
30. The Edwards Pond Property is recognized by members of the public as having a passive use or existence value, even if these members of the public never directly use it. This includes the psychological benefit to the public of knowing that the local environment and its wildlife resources are protected, and the option value of being able to use the Edwards Pond Property persists.
31. The Edwards Pond Property has an ecosystem that has an inherent value beyond its economic or recreational usefulness to humans. The tree destroyed in the Incident was part of, and supported, the ecosystem of the Edwards Pond Property in structural and biological diversity, and so contributed directly to the health of the ecosystem.

32. The Incident has irreparably damaged the Edwards Pond Property.
33. SILT has a rehabilitation plan that consists largely of steps to promote the natural regrowth of the trees and vegetation surrounding the area affected by the Incident.

## **Part 2:RELIEF SOUGHT**

1. An Order restraining Mr. Lockhart, John Doe, and/or Jane Doe from trespassing on the Property in the future.
2. Damages for restoration of the Property from the trespass.
3. Damages for restoration of the Property from the Incident.
4. Damages for loss of amenities.
5. Damages for environmental loss suffered, which include the commercial value of the tree plus a premium for its environmental and aesthetic value.
6. Costs.
7. Any other relief that this Honourable court deems just.

## **Part 3:LEGAL BASIS**

1. *Kates v. Hall*, unreported, Vancouver Registry No. c876526 where Taylor J. (as he then was) said at p. 6:

I find it appropriate to award compensatory damages in a sum sufficient to pay for the remedial work which a reasonable person without money constraints in the plaintiffs' position would have implemented had the loss been caused without fault on anyone's part, and in addition an amount which will fairly compensate the plaintiffs for loss of use and enjoyment to the extent that this scheme will not completely replace what has been lost.

2. *British Columbia v. Canadian Forest Products Ltd.*, 1999 Carswell BC 1871, relying on *Wood v. Grand Valley Railway* (1915), 51 S.C.R. 283 (S.C.C.) and *Penvidic Contracting Co. v. International Nickel Co.*(1975, [1976] 1 S.C.R. 267 (S.C.C.) and cited in *British Columbia v. Canadian Forest Products Ltd.*, 2004 SCC 38:

The difficulty of estimating damages accurately should not relieve the wrongdoer of the need to pay damages, that the judge/jury must "do 'the best it can' and its conclusions will not be set aside even if 'the amount of the verdict is a matter of guesswork'"... "Ecological loss is tangible and real, not merely an amenity value."

3. *Trespass Act*, RSBC 2018, c.3, at s. 2(1):

Subject to section 3, a person who does any of the following commits an offence:

- (a) Enters premises that are enclosed land;
- (b) Enters premises after the person has had notice from an occupier of the premises or an authorized person that the entry is prohibited;
- (c) Engages in activity on or in premises after the person has had notice from an occupier of the premises or an authorized person that the activity is prohibited.

4. *Negligence Act*, RSBC 1996, c. 333

5. *Law and Equity Act*, RSBC 1996, c. 253

6. *Wildlife Act*, RSBC 1996, c. 488.

7. *Migratory Birds Convention Act*, S.C. 1994, c. 22.

Plaintiff's(s') address for service: c/o Jaimie Kidston Law Office  
203 – 383 Ellis Street  
Penticton, BC V2A 4L8


Fax number address for service (if any): NA

E-mail address for service (if any): lrichardson@kidstonlaw.com

Place of trial: Penticton, British Columbia

The address of the registry is: 100 Main Street, Penticton, BC V2A 5A5

Date: 08 November, 2023

  
\_\_\_\_\_  
Signature of Lindsey Richardson  
lawyer for 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.

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

Claim for relief following cutting down of tree on privately held land.

**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:**

1. *Trespass Act*
2. *Law and Equity Act*
3. *Negligence Act*