

Original filed: December 18, 2018

Amended without leave pursuant to Rule 6-1(1)

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

MAY 21 2021

No. S1813609
Vancouver Registry



BETWEEN:

IN THE SUPREME COURT OF BRITISH COLUMBIA

RONALD GORDON FLEMING AND LOVE BROS. & LEE LTD.

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
(MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL
DEVELOPMENT) and

DOUG DONALDSON, MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE
OPERATIONS AND RURAL DEVELOPMENT

DEFENDANTS

Brought under the Class Proceedings Act, R.S.B.C. 1996, c.50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs 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

The Parties

1. The Plaintiff Ronald Gordon Fleming ("Fleming") is a guide outfitter residing in Hazelton, British Columbia and has an address for delivery care of McMillan LLP, Suite 1500-1055 West Georgia Street, Vancouver, BC, V6E 4N7.
2. Fleming has been a licensed guide outfitter in British Columbia for 45 years. Fleming first obtained his guide outfitter license in 1973.
3. Love Bros. & Lee Ltd. ("Love Bros.") is a British Columbia company incorporated pursuant to the laws of the Province of British Columbia and has a registered office at 3875 Broadway Avenue, Smithers, BC, V0J 2N0.
4. Love Bros. was incorporated and registered as a company in 1975 and has been in the business of providing guide-outfitting services to resident and non-resident hunters in British Columbia since that date. Earlier iterations of the company have operated since 1948.
5. Fleming first started work for the earlier iteration of Love Bros. in 1969. Beginning in 1970 and concluding in 1984, Fleming acquired parts of the business from the then owners, until he and his spouse Brenda Nelson had full ownership in 1984.
6. Love Bros. concentrates its business on guiding hunters who are hunting for grizzly bear and mountain goat, as well as moose, caribou and black bear.
7. The Defendant, Her Majesty the Queen in right of the Province of British Columbia (Ministry of Forests, Lands, Natural Resource Operations and Rural Development) (the "Government" or "FLNRORD"), is the government of British Columbia and has an address for delivery care of the Attorney General of British Columbia.

8. At all material times, Doug Donaldson (“Donaldson” or the “Minister”) is was the Minister of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development and was is the minister responsible for the *Wildlife Act* and the regulation of guide outfitters. Donaldson has an address for delivery care of the Attorney General of British Columbia.

The Proposed Class

9. There are approximately 245 licensed guide outfitters in British Columbia, comprising both aboriginal and non-aboriginal persons. All licensed guide outfitters must be Canadian citizens. Of the 245 guide outfitters, 118 of them held allocations and quotas for guiding hunters for the hunting of grizzly bears as of December 17, 2017.
10. Fleming and Love Bros. bring this action on their own behalf and on behalf of a class of persons in British Columbia who held Guide Outfitting Territories as of December 17 ~~17~~ 15, 2017 and who had an allocation and quota for guiding resident and non-resident hunters to hunt grizzly bears, such class to be further defined in the motion for certification. The plaintiffs plead and relies on the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and amendments thereto.

Overview of the History of Guide-Outfitters in British Columbia and the Grizzly Bear Hunt

11. Guide outfitters have been present in British Columbia since the late 1800s.
12. The business of guide outfitting is a significant contributor to the economy of British Columbia, adding over \$116 million to British Columbia’s economy and creating over 2,000 jobs. Guide outfitters provide guiding services to non-resident hunters from outside of the Province of British Columbia (i.e. hunters from other parts of Canada or from foreign countries), as well as British Columbia residents upon request.
13. British Columbia has benefitted from non-resident hunters for over 100 years and guided clients are one of the highest spending tourists per capita visit to British Columbia.
14. Beginning in 1961 with the passage of the first legislation in British Columbia regulating guide outfitters, licensed guide outfitters received the exclusive rights to guide non-resident big game hunters within specific geographic areas within British Columbia. Every non-resident hunter must use the services of a guide outfitter to hunt for big game in British Columbia. A resident of British Columbia may elect to use a guide outfitter to hunt for big game; but he or she is not required to do.
15. A guiding territory certificate and guide outfitter license confers the exclusive right to conduct a guiding business over the specific area of Crown land during the term of the certificate. The exclusivity of the guide outfitter certificate to guide non-resident hunters is the foundation of the guide outfitting industry in British Columbia.
16. In reliance upon the exclusivity of the certificate and the accompanying allocation and quota, the plaintiffs and class members invested in the development of their guide-outfitting businesses. The costs of purchasing a guide territory certificate and development of a guide outfitting business are very significant, and include building and

- maintaining hunting camps and lodges, marketing, various taxes and license fees paid to the Government, fees paid for annual Park Use permits, insurance, equipment costs, and other related costs.
17. The price a guide outfitter charges for a guided hunt of a grizzly bear is high, often in the range of \$25,000 USD per guided hunter. The typical guide fee for the hunt is based on the opportunity to hunt for a certain species of big game, and may include more than one species of wildlife.
 18. The fee paid to the guide outfitter and his or her company is paid regardless of whether the hunt is successful or not. In some cases, a further fee is payable upon a successful harvest. Grizzly bear hunts, on their own or in combination with other hunts, are the most profitable of the guided hunts.
 19. The Government actively promotes the business of hunting and trapping and describes hunting and trapping as a valuable part of the province's heritage and thereby communicated to the Plaintiffs and class members that they should continue to invest financially in the hunting industry, including the grizzly bear hunt.
 20. British Columbia is home to a majority of North America's big-game species, including grizzly bear. There are approximately 15,000 grizzly bears in British Columbia, approximately 25% of the entire grizzly population in North America. The Government estimates that the grizzly bear population has remained in the range of 14,000 to 16,000 for the last two decades.
 21. Other than a short-lived ban in 2001, grizzly bears have been hunted in British Columbia for hundreds, if not thousands, of years. Fifty-seven (57) grizzly bear population management units are used to determine annual harvesting rates for grizzly bears. Until December 2017, approximately 65% of the province was open for grizzly bear hunting.
 22. There was an average of 212 guided grizzly bear hunts each year from 2011 to 2015 in British Columbia. Typically each year there was both a spring hunt from April 1 to June 15 and a fall hunt from September 1 to November 30 whereby hunters had to either obtain a limited entry hunt authorization or be guided by a guide-outfitter who had a grizzly bear quota.
 23. The proportion of a grizzly bear population that can be harvested by humans without creating a population decline has been analyzed in detail by the Government. The Government has stated that "[c]omputer modelling, based on recently documented reproductive and survival rates for Grizzly Bears, also indicates that 6% human-caused mortality is conservative and that rates up to or even exceeding 9% can be sustainable for some populations."
 24. The Government has amassed detailed information on the grizzly bear hunt since the mid-1970s, and has concluded that the British Columbia grizzly bear hunt is sustainable. The Government currently estimates that a 4-10% annual harvest is a sustainable harvest rate.
 25. Historically, resident and non-resident hunters harvest less than 2% of the British Columbia grizzly bear population each year.

26. As of December 15, 2017, the grizzly bear annual harvest in British Columbia was sustainable. Prior to the change in government in June 2017, the Government had identified no wildlife conservation reasons to ban the grizzly bear hunt.
27. Up until December ~~18~~ 15, 2017 it was lawful to hunt for grizzly bears in British Columbia, subject to meeting the requirements of the *Wildlife Act*.

The Legislative Scheme under the *Wildlife Act* and related regulation

28. Wildlife management in British Columbia is part of an integrated management scheme to properly manage overall wildlife species, manage fishing and hunting activities, and for the allocation of fish and wildlife resources for recreational and commercial use.
29. The *Wildlife Act* (the “*Act*”) and regulations allow the hunting of a variety of big game species in British Columbia. Until December 2017, these species included (a) bison; (b) black bear; (c) bobcat; (d) caribou; (e) cougar; (f) deer; (g) elk; (h) grizzly bear; (i) lynx; (j) moose; (k) mountain goat; (l) mountain sheep; (m) wolf; and (n) wolverine.
30. Under the *Act*, a person who hunts wildlife without all required licenses, permits and authorizations commits an offence. Additionally, non-resident hunters are required to be accompanied by licensed guide outfitters (or authorized assistants) or by a person who holds a permit to accompany under s. 70 when hunting big game.
31. The *Act* also contains the following offence:
- 26 (1) A person commits an offence if the person hunts, takes, traps, wounds or kills wildlife
- (a) that is an endangered species or threatened species,
 - (b) in a wildlife sanctuary,
 - (c) at a time not within the open season, [...]
32. An “open season” is defined in the *Act* as “a specified period of time during which a species of wildlife may be hunted or taken,” while a “closed season” is defined as “a specified period during which a species of wildlife must not be hunted or taken.”
33. Under the *Act*, both the Lieutenant Governor in Council and the Minister have the authority to make regulations about hunting. Specifically, s. 108(3) gives the Lieutenant Governor in Council authority to make regulations:
- (e) prescribing open seasons or closed seasons, or both, for
 - (i) wildlife by species, type, sex, age, circumstances or physical features of the wildlife, or
 - (ii) persons, licences or permits, including prescribing different seasons for different classes of persons, including, without limitation, classes based on age.

34. According to s. 40 of the *Act*, the Minister may also prohibit hunting for “the proper management of wildlife” in a defined area of the province:
- (1) Despite anything in this *Act* or the regulations or the privileges conferred by a licence or limited entry hunting authorization, the minister may, by regulation, prohibit a person or a class of persons from
- (a) hunting or trapping, or
 - (b) using a method of hunting or trapping
- in a defined area for a period the minister considers necessary for the proper management of wildlife in that area.
35. The Minister has additional regulation making powers under s. 109, which allows the Minister to make regulations concerning prohibiting, restricting or allowing access by members of the public to areas of the province for the purposes of wildlife management and regulating or prohibiting the attraction of animals to certain areas, among other things.
36. The Minister does not have the legal authority under the *Wildlife Act*:
- a. to prohibit the hunting of a specific species generally within the province;
 - b. to regulate the hunting of grizzly bears outside of the scope of proper wildlife management or related legislative provisions;
 - c. to regulate or prohibit the grizzly bear hunt for political, social or public opinion reasons; or
 - d. to regulate in a manner inconsistent with the purpose and provisions of the *Wildlife Act*.

Guide Outfitting Certificates, Allocations and Licenses for Grizzly bears

37. A Guiding Territory Certificate granted certain rights and interests to the holder, including an associated commercial value, and the holder is able to sell the Guide Outfitting Certificate to a qualified third party in accordance with the applicable regulations. The value of the Guide Territory Certificate is tied to the type and number of wildlife species available for hunting in that territory. The Guide Territory Certificates sell for sums that range as high as millions of dollars.
38. Each class members’ Guiding Territory Certificate is associated with an exclusive geographic hunting area. The current regions of British Columbia are as follows:
- (a) Region 1: Vancouver Island
 - (b) Region 2: Lower Mainland
 - (c) Region 3: Thompson

- (d) Region 4: Kootenay (Southern)
 - (e) Region 5: Cariboo Chilcotin
 - (f) Region 6: Skeena (North West)
 - (g) Region 7A: Omineca (North Central)
 - (h) Region 7B: Peace
 - (i) Region 8: Okanagan
39. Fleming is the authorized holder of Guiding Territory Certificate #700004, Territory ID #739G002 issued under the *Wildlife Act*. The Certificate provides that the “certificate holder(s) (the “holder”) has exclusive control over guiding privileges in the guiding territory described in the certificate (the “guiding territory”).
 40. Fleming’s Guiding Territory Certificate is valid for a 25-year period covering March 27, 2013 to March 27, 2038 (as amended May 2016). The Guiding Territory Certificate entitled Fleming and Love Bros. to provide exclusive guiding services in the specified guiding territory. It also permitted Fleming to receive from the Minister a five-year allocation and quota for the hunting of certain species of animals in that guiding territory.
 41. Every five-year period, the Government sets wildlife harvest allocations for key “Category A” big game hunts. “Category A” animals are those whose licensed harvest is managed via splits between resident and non-resident hunters in every region for the following five years. Grizzly bear is the only species that is allocated on a province-wide basis.
 42. The Government’s process ~~involving~~ involves determining population levels for each species of wildlife, accounting for First Nations’ harvest and reserving this number, and then splitting the remainder of any available harvest between resident hunters and guide-outfitters.
 43. Each guide outfitter’s allocation is for a five-year period specifying the number of and species of wildlife that the guide-outfitter can legally guide hunters to harvest in a five-year period. For those wildlife species that are managed through a quota, an annual license sets out how many of each species can be harvested during the year of the license.
 44. At all materials times Fleming was the holder of a guide outfitter license #GOMRPG17-270369 issued to him by FLNRORD, or its predecessor ministries. The guide outfitter license issued to Fleming provided him with a five-year allocation for the Five Year Harvest Maximum (“FYHM”) for the 2017-2021 allocation period for both the Skeena and Omineca Regions. The allocation or FYHM was stated to be the five-year share of the licensed sustainable harvest of a species for the 2017-2021 allocation period.
 45. At all materials times, Fleming was issued an allocation from FLNRORD for several species of big game including bull moose, tinnhorn sheep, caribou, mountain goat and grizzly bears. The grizzly bear allocation for Region 6 (Skeena) authorized him to harvest two grizzly bears within a five year allocation period and 11 grizzly bears for harvest within a five year period in Region 7A (Omineca).

46. The Government and the Minister represented to Fleming in the five year allocation letter issued to Fleming, and to each class member, in writing that the only time an allocation or yearly quota would change would be because of wildlife management reasons such as “changes in population estimates or other conservation matters” or “changes in population or permissible harvest rates” or First Nations’ for the exercise of Aboriginal rights. The wording of all of the letters from Government to the class members were the same or substantially similar.
47. Fleming and class members reasonably relied on these representations.

The Representations

48. The Government represented to the Plaintiffs and class members by (a) conduct and by (b) ~~oral and~~ written statements that the Government would implement and maintain a scheme that would permit the Plaintiffs and class members to harvest wildlife, including grizzly bears, on a preferential or exclusive basis indefinitely, which scheme would only be modified for valid wildlife management or First Nations reasons, and not for political, social or public opinion reasons. Particulars of the representations include, ~~but are not limited to, the following are as follows:~~
- a. The adoption of the guide outfitting scheme , which included the exclusive territories, the license, the allocation and quotas system for licensed guide outfitters and criminal or quasi-criminal sanctions for those who were unlicensed, which did provide and was intended by the Government to provide assurances to the Plaintiffs and class members that they should purchase Guide Territory Certificates, invest in the guide outfitting industry and that the Government would provide a long-term scheme to protect their financial investments.
 - b. the Government published policy manuals to provide information to the Plaintiffs and class members on the principles and direction of the Government regarding hunting and intended that the Plaintiffs and class members rely on such statements. The Commercial Hunting Interests policy published effective March 29, 2007 specifically represented to the Plaintiffs and class members that:
 - (a) That guide outfitters’ commercial interests in the harvest of big game species will be addressed by:
 - (i) requiring non-resident hunters to hire a guide outfitter to hunt big game in the province, except when permits to accompany have been issued;
 - (ii) providing guided hunters with predictable, fair shares of the allocations of category A species in certificated areas;
 - (iii) supporting the viability of the guide outfitting industry by committing to: a. the timely application of decision making processes regarding the transfer and disposition of guide territories; b. the timely review of the status of uncertificated areas; c. creating and maintaining a regulatory framework that maximizes guided hunters’

success, enjoyment, and participation; d. the maintenance of exclusive guided hunting rights for guide outfitters; and

- (iv) removing unnecessary barriers to achievement of allocation prior to reducing allocation.

- c. The Big Game Harvest Management policy further represented the Government's approach to hunting regulation making and its policy of involving stakeholders in decisions:

4.1 Stakeholder involvement in game harvest policy issues and provincial regulatory decisions will be encouraged and facilitated through a provincial hunting regulation and policy committee.

- d. The Government represented that the allocation of available species for harvest would adhere to certain principles, which included that:
 - i. Regional allocation splits to be in keeping with the principle of 'resident priority' whereby resident hunters continue to receive priority shares of the wildlife allocation, with a stable and predictable percentage.
 - ii. A commitment to maintain vacant areas and areas not currently allocated to guides as unguided areas, available for First Nations and resident hunting only.
 - iii. Clear splits for each allocated hunt resulting in less discretion in the hands of regional managers – and therefore more certainty for all user groups.
 - iv. Targeted increased shares of allocation for guide outfitters to help ensure the guide outfitter industry remains economically viable.
 - v. No additional mitigation measures for guides beyond the increased harvest percentages as noted.

These are collectively referred to as the "Representations."

- 49. The Government acted consistently with these representations over an extended period of time prior to December 15, 2017 thereby leading the Plaintiffs and class members to reasonably conclude that the protection of their commercial interests would continue and that the Government would not act to harm their financial interests.
- 50. The Plaintiffs and class members were in a unique relationship with the Defendants Government due to the overall scheme for the management of the guide-outfitting business, the transactions between the Government and the Plaintiffs and class members during the time that scheme has been in effect and the Government's active promotion of the province's hunting and trapping industries and encouragement of financial investment in the province by those industries.
- 51. The Government assumed a role that was more than that of regulator of the industry, and instead created a special partnership relationship between the government and guide

outfitters by advising and assisting the Plaintiffs and class members with protection of their commercial interests as guide outfitters through the policies set out above, the partnership relationship working closely with the guide outfitters on all issues related to commercial hunting interests, the tenure of their Guide Territory Certificates, the five year allocations and quotas which were routinely renewed, and the Government's knowledge and approval of the sales of Guiding Territory Certificates.

52. The ~~Defendants~~ Government knew or ought to have reasonably foreseen that the Plaintiffs and the class members would ~~reply~~ rely on the Representations.
53. The Plaintiffs and class members reasonably relied on these Representations. It was reasonable for the Plaintiffs and the class members to rely on these Representations because of the long-standing involvement of the Government in protecting the commercial interests of guide outfitter, and the history of regulating the right to act as a guide-outfitter.
54. The Representations were made negligently or recklessly, and were false.
55. The Plaintiffs and the class members have suffered, and continue to suffer, loss, damage and expense from the loss of revenue due to the cancelation of the grizzly bear hunt and the reduction in value of their Guiding Territory Certificates as a result of the false Representations.

The change in Legislative Scheme

56. On August 14, 2017, the Ministry of Forests, Lands, Natural Resource Operations and Rural Development ("FLNRORD") announced that, effective November 30, 2017, the government would be ending grizzly bear "trophy" hunting throughout the province. Government and the Minister stated that:

[w]hile the trophy hunt will end, hunting for meat will be allowed to continue" and that the "government will be moving forward with a broader consultation process on a renewed wildlife management strategy for the province.
57. At the time of this announcement, FLNRORD stated that hunting grizzly bears for meat would be allowed to continue, thereby confirming FLNRORDs position that the existing grizzly bear was sustainable.
58. On September 26, 2017, the Ministry of FLNRORD sent a letter to guide outfitters with some "additional information related to the announcement to end the trophy hunt of grizzly bear throughout the province and all hunting in the Great Bear Rainforest." The letter stated that:

"The Fish and Wildlife Branch will begin a consultation process in early October to discuss policy, operational options and next steps with key provincial stakeholders, including the Guide Outfitters Association of BC, the Wildlife Stewardship Council and the BC Wildlife Federation, and First Nations."

59. Contrary to these representations made by the Government and the Minister, there was no consultation with potentially affected guide outfitters, resident hunters or First Nations that the Government or Minister intended to completely ban the grizzly bear hunt. Without any warning or notice and in direct contradiction to these representations made about first consulting with guide outfitters and the representations in the Allocations and the Quota, on December 15, 2017, the Minister signed Ministerial Order No. M414 (the “Order”), amending both the Hunting Regulation and the Limited Entry Hunting Regulation, primarily by removing references to “grizzly bear” which enacted a complete ban on grizzly bear hunting effective immediately.
60. The Government conducted public opinion polling regarding grizzly bear hunting and relied on negative public sentiment, rather than science, to influence the Minister to enact the changes.
61. Additionally, the Order amended the Hunting Regulation by removing the following provision:
 13. There is no open season for a grizzly bear less than 2 years old or any grizzly bear accompanying it.
62. The Minister knew at the time of the changes that there was no wildlife management reason for changing the Plaintiffs’ and class members’ grizzly bear allocations or quota under the *Wildlife Act*, and that the then existing level of grizzly bear harvest was sustainable. Despite this knowledge, the Minister improperly exceeded his authority exercised his powers to in make making the amendments.
63. The Minister was advised that a ban on grizzly bear hunting would cause financial harm to the licensed guide outfitters and thus the Minister had actual knowledge that banning the grizzly bear hunt would cause financial harm to licensed guide outfitters who had an allocation and quota for grizzly bears.
64. The Minister did not act independently in making the decision to amend the regulations to the *Wildlife Act* and related regulations, but rather was influenced and pressured by others to enact the regulatory changes banning the hunting of grizzly bear, despite his own opposition to the ban.
65. The Minister, with knowledge that he could not lawfully act under the *Wildlife Act* to stop the grizzly bear hunt, and that any ban on grizzly bear hunting would harm the Plaintiffs and all class members proceeded to *de facto* amend the allocation and certificates by removing the reference in the regulations to “grizzly bear”, and thereby making it impossible for the Plaintiffs and class members to utilize their pre-existing authorized and valid grizzly bear allocation and quota.
66. The Minister’s amendments also removed references to “grizzly bear” in the schedules attached to the Hunting Regulation. This included removing s. 5 of part 2 of Schedule 5 and s. 4 of part 2 of Schedule 6, which had regulated the areas where there was no open season for grizzly bear hunting in the province. s. 9 of part 2 of Schedule 1, which also dealt with the geographic boundaries for grizzly bear hunting was amended to remove references to “grizzly bear”.

67. The Order also repealed the definitions of “adult grizzly bear”, “fall grizzly bear” and “spring grizzly bear” from the Limited Entry Hunting Regulation and removed various references to grizzly bears throughout.
68. Further additional amendments relating to grizzly bears were made in March 2018 to the various hunting regulations.
69. When the Minister made the amendments to remove the references to “grizzly bears” Government and the Minister knew that the decision was not related to wildlife management or sustainability of the grizzly bear hunt as required by the legislative scheme, but rather made for political, social and public opinion reasons or an otherwise improper purpose not related to the legislative scheme.
70. The Minister acted outside the purpose of the *Act* and intended to bypass the requirements of the legislation that there be a wildlife management reason for the change in grizzly bear hunting. Further, the Minister’s actions in removing the legislative references to “grizzly bear” served an ulterior motive and was not animated by the legitimate intent of the *Wildlife Act*.
71. The Minister has made many public statements after enacting the amendments to the regulations to ban the grizzly bear hunt confirming that the amendments were made for social and public opinion reasons, not wildlife conservation reasons under the *Wildlife Act*, including:

That out of a population of 15,000 grizzly bears, about 250 are harvested every years which is “sustainable” but public opinion has turned.

That the purpose of the ban isn’t because the number of killings is unsustainable for the grizzly population, but largely in response of public opinion

“Through consultations this past fall, we have listened to what British Columbians have to say on this issue and it is abundantly clear that the grizzly hunt is not in line with their values...”

“It’s not a matter of numbers. Society has come to the point in B.C. where they are no longer in favour of a grizzly bear trophy hunt”

72. Other senior members of the Government have made similar statements confirming that the ban on grizzly bear hunting was made for political, social or public opinion reasons, including Scott Fraser, Minister of Indigenous Relations and Reconciliation, who stated in the Legislative Assembly that:

We’re ending the grizzly bear trophy hunt. Over 90 percent of British Columbians have said that that is unacceptable in this province. I believe government’s role is to reflect the will of the people of this province. This is more than a symbolic gesture. The grizzly being an icon — I get that. As time changes, values change,

and governments must make the decisions that reflect those values, and this decision does just that.

73. In the spring of 2018, the Minister directed his delegates to issue “amended licenses” to guide outfitters that did not contain quotas for grizzly bears. The amended licenses provided to Fleming and the class members stated:

The quotas for the 2018/19 season have been determined and approved. Please find attached your amended Guide Outfitter 5 Year Licence. Please destroy your previous licence and replace with this one.

If you require Guide Declarations, please contact me with the amount you require and an address to send them to.

Let me know if you have any questions.

74. The amended licenses provided to Fleming and class members removed all references to grizzly bears and did not provide any allocation or quota for them, despite the respective valid and existing allocations that provided authorization for the hunting of grizzly bears for the five-year period 2017-2021.

Adverse Financial Impacts on Guide Outfitters

75. To the defendants’ knowledge, and in reliance on the defendants’ Representations, prior to the defendants’ imposition of the grizzly bear hunting ban, the Plaintiffs and class members’ guide outfitting businesses were largely dependent on the allocations providing authorization for the hunting of grizzly bears. In further reliance on the Representations, the Plaintiffs and class members incurred significant time and expense as further particularized below and have suffered loss and damages as a result of the improper grizzly bear hunting ban.
76. Most big game hunters book their hunts several years in advance. The Plaintiffs and other class members had already booked hunts with paid deposits from hunters for grizzly bears (often with other species hunts included with the prime grizzly bear hunt - also called “mixed bag hunts”) for the upcoming hunting seasons including in 2018, 2019, 2020 and 2021 at the time of the Minister’s hunting ban.
77. The Plaintiffs and class members were required to return deposits to customers, and lost bookings for upcoming hunts (including mixed bag hunts and non-grizzly bear hunts) because of the actions of the Government and the Minister.
78. Despite the grizzly bear hunting ban, the Plaintiffs and class members were required to continue to pay for all of the ongoing costs associated with maintaining their guiding territories including:
- (a) payment of annual license fees to Government;
 - (b) payment of land use permits to Government;
 - (c) payment for Park Use permits (if located in a Government park) to Government;

- (d) payment of fees for a base camp and each satellite camp located on Government land to the Government;
 - (e) payment of taxes for each camp to the Government;
 - (f) upkeep and maintenance of Government trails and camp lands;
 - (g) payment for Government required liability insurance;
 - (h) payment for Guiding Territory Certificate to Government;
 - (i) costs for maintaining camp horses;
 - (j) costs of repair and maintenance for cook houses and camp buildings;
 - (k) costs for flying in and out of camp;
 - (l) costs of assistant guides;
 - (m) costs of airport leases, boat, vehicles, and other equipment; and
 - (n) such further and other costs as may be particularized.
79. The Plaintiffs and class members have suffered significant and ongoing financial loss and harm directly resulting from the actions of the Government and the Minister, including but not limited to loss of revenue and costs and expenses incurred, in part at the behest of the Government, to maintain guiding territories inclusive.
80. The Plaintiffs and class members reasonably expected that their ability to provide for guide outfitter services for grizzly bear hunters would continue due to the long-standing government sanctioned scheme of providing these regulated services in British Columbia.
81. The Government and the Minister knew that their actions in banning the grizzly bear hunt would harm and did cause loss and damage to the Plaintiff and the class members, including loss of business, and devaluation of the Guide Territory Certificates. Minister Donaldson stated in August 2017 that he “recognized that there will be some loss of revenue in small communities from many aspects”. Other Government acknowledgement of the harm was made by Minister Lana Popham, acting Minister of Tourism, Arts and Culture at the time, admitted in the Legislative Assembly that the government “[knows] that there is an impact on the guide-outfitters with this decision...”

The proposed class meets the requirements of the *Class Proceedings Act*

82. There are ~~188~~ 118 guide outfitters who relied on the Misrepresentations and have been directly impacted by the Government and Minister’s unlawful actions.
83. There are questions of law and fact common to the class. The claims of the Plaintiffs are typical of the claims of the class and the Plaintiffs will adequately represent and protect the interest of the class.

84. Separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class.
85. Questions of law and fact common to the members of the class with respect to the relief claimed predominate over the questions affecting individual members. A class action is superior to other available methods for a fair and efficient adjudication of this controversy.
86. The Plaintiffs have sustained financial loss and harm because of the unlawful conduct of the defendants as alleged in this Amended Notice of Civil Claim and have no conflict with the other members of the class.

Part 2:RELIEF SOUGHT

The Plaintiffs seeks and claims on his their behalf and on behalf of all class members:

87. An order certifying this action as a class action and appointing the Plaintiffs as class representatives and other appropriate orders under the provisions of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50;
88. General Damages for negligent misrepresentation, as against the Government
89. General Damages for misfeasance in public office, as against the defendant Minister;
90. Special damages;
91. Punitive damages;
92. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
93. Such further and other relief as the court deems appropriate.

Part 3:LEGAL BASIS

94. The ~~Defendants~~ Government is liable to the Plaintiffs and class members based on negligent misrepresentation.
95. The ~~Defendants~~ Government owed a duty of care to the Plaintiffs and all class members.
96. There was a special relationship between the Plaintiffs and class members and the ~~Defendants~~ Government.
97. The Defendants acted negligently in making Representations to the Plaintiffs and the class members regarding the guide outfitting scheme, grizzly bear allocation and quotas.
98. The Plaintiffs and class members reasonably relied on the Representations made to them by the Defendants.
99. The ~~Defendants~~ Government ought to have reasonably foreseen that the Plaintiffs and class members would rely on those Representations.
100. The Representations were false.

101. The Plaintiffs and each class member suffered damages as a result of relying on the Defendants' Representations and have suffered financial harm and loss in the result.
102. The changes to the regulations were not done for a reason connected with the purpose of the *Wildlife Act* and were done for improper collateral political, social or public opinion reasons.
103. The ~~Government and the~~ Minister knew that the regulatory changes were invalid, unlawful and *ultra vires*.
104. In exercising ~~their~~ his powers as a public officers, ~~the Government and the~~ Minister knowingly made invalid, unlawful and ultra vires decisions with the knowledge or with reckless indifference to the possibility that the decisions ~~were~~ was likely to cause damages to the Plaintiffs and class members.
105. The ~~Defendants were~~ Minister was under a duty to act lawfully, and ~~are~~ is liable to the Plaintiffs and class members for misfeasance in public office by knowingly acting when ~~they~~ he had no lawful reason to stop the grizzly bear hunt on wildlife management or First Nations Aboriginal rights grounds and took steps to ban the grizzly bear hunt for unlawful reasons, which caused injury to the Plaintiffs and class members.
106. The Government is vicariously liable for the acts of the Minister.
107. The Plaintiffs plead and rely on the *Wildlife Act*, R.S.B.C. 1996, c. 488 and regulations thereunder.
108. The Plaintiffs plead and rely on the *Hunting and Fishing Heritage Act*, S.B.C. 2002, c. 79.
109. The Plaintiffs plead and rely on the provisions of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, as amended.
110. The Plaintiffs plead and rely on the provisions of the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

Plaintiffs' address for service: McMillan LLP
 Barristers and Solicitors
 1500 - 1055 West Georgia Street
 Vancouver, BC V6E 4N7
 (Attention: Joan M. Young)

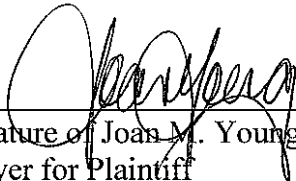
Fax number address for service (if any): none

Email for service (if any): joan.young@mcmillan.ca

Place of trial: Vancouver, British Columbia

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

Dated: ~~December 17, 2018~~ May 20, 2021


 Signature of Joan M. Young,
 Lawyer for Plaintiff

McMillan LLP

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:

The Plaintiffs' claim is against the Defendants for negligent misrepresentation and misfeasance in public office.

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]

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

Part 4:

Wildlife Act,

Class Proceeding Act,

Court Order Interest Act, R.S.B.C. 1996, c. 79.