

No.
Vancouver Registry

M. James #1
Nov. 1, 2010

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the matter of Section 2 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241
and British Columbia Timber Sale Licence A80073
issued under the *Forest Act* [RSBC 1996] Chapter 157

BETWEEN:

**VANCE ROBERT CAMPBELL, MARILYN JAMES, LOLA JON CAMPBELL,
TARESS ALEXIS and ROBERT WATT, Directors of the Sinixt Nation Society,
representative body of the SINIXT NATION, on their own behalf and on behalf of
THE SINIXT NATION and THE SINIXT NATION SOCIETY**

PETITIONERS

AND:

**MINISTER OF FORESTS AND RANGE OF BRITISH COLUMBIA AND
SUNSHINE LOGGING (2004) LTD.**

RESPONDENTS

AFFIDAVIT OF MARILYN JAMES

I, MARILYN JAMES, of the Sinixt Nation (Lakes), in the Northern Territory,
located in the Province of British Columbia, in Canada, MAKE OATH AND SAY AS
FOLLOWS:

1. I am the appointed spokesperson for the Sinixt Nation and a Director of the Sinixt Nation Society. I have personal knowledge of the facts and matters deposed to in this Affidavit except where stated to be on the basis of information and belief, in which case I believe the same to be true.

A. Tribe

2. I am an aboriginal person.
3. I am descended from, and have living relatives among, an indigenous group of people who have historically identified, and continue to identify, themselves as sngaytskstx, or Sinixt (“the Sinixt” or “the Sinixt Nation”).

4. In Canada and in the United States of America, my people are also known as the Lakes Tribe, Lakes Salish, Arrow Lakes Indians and/or Arrow Lake(s) Band.
5. The activities, financial and otherwise, of the Sinixt Nation in Canada are carried on through the Sinixt Nation Society, a society incorporated under the laws of British Columbia.
6. I am a *Mxgxia* (Blood) Member and Director of the Sinixt Nation Society.

B. The Sinixt Nation Society

7. The legal and financial activities of the Sinixt Nation in Canada are carried on through the Sinixt Nation Society, a society incorporated under the laws of British Columbia on October 30, 2006, as indicated by the Certificate of Incorporation attached as Exhibit 1 to this My Affidavit.
8. The Sinixt Nation Society has a membership including 150 individual *Mxgxia* (Blood) Members who are descended from an indigenous group of people who have historically identified and continue to identify themselves as Sinixt and/or Lakes.
9. Attached as Exhibit 2 to this My Affidavit are true copies of some of the Tribal Enrollment forms of the said *Mxgxia* (Blood) membership of the Sinixt Nation Society.
10. The Sinixt have undertaken to govern the Sinixt Nation Society and to pursue our aboriginal rights in Canada in accordance with the principles set out in the Sinixt Manifesto, a copy of which is attached as Exhibit 3 to this My Affidavit. The Sinixt Manifesto is referentially incorporated into the Article of Incorporation of the Sinixt Nation Society, which is attached as Exhibit 4 to this My Affidavit.

C. Traditional Territories

11. The traditional / ancestral territory of the Sinixt, as surveyed and mapped repeatedly, is from the peak of the Monashee Mountains in the west to the peak of the Purcell and Selkirk Mountains in the east; and from a northern point which includes the Columbia Mountain Range north of Revelstoke, B.C., to Kettle Falls in the high desert plateau south of the 49th parallel (“the Territory”).
12. Eighty percent (80%) of the Territory lies north of the 49th parallel, in what is now modern-day Canada.
13. In relation to the Sinixt Territory, the Sinixt have pending an aboriginal title claim against the Federal and Provincial Crown. This action was commenced on July 28, 2008, under B.C. Supreme Court File No. 14324, by Writ of Summons, a copy of which is attached as Exhibit 5 to this My Affidavit.

14. Appended to the Sinixt aboriginal title Writ is a map which indicates the traditional / ancestral Territory claimed by the Sinixt.
15. I use the term “traditional territory” as that term is defined at page 12 of Bouchard and Kennedy’s *First Nations’ Aboriginal Interests and Traditional Use in the Waneta Hydroelectric Expansion Project Area: A Summary and Analysis of Known and Available Information* [attached as Exhibit 80 to this My Affidavit]:

It should also be noted, however, that First Nations have a relationship with much broader territories than the specific sites identified by name. They used and occupied lands that we refer to commonly as their “traditional territory.” Their use of such territory was not necessarily to the exclusion of other indigenous people, but this territory did contain a particular group’s winter villages and customarily-used resource-harvesting sites. In the present report, when we speak of a specific area being within the “traditional territory” of a certain people, we mean that the area was used primarily by these people and that they and other tribes regarded it as their territory. Indigenous people associated with other tribes may have used the same area, provided they made their presence and amicable intentions known, or traveled there as guests of the resident First Nation. While incursion into a neighbouring First Nation’s territory and exploitation of their resources was not uncommon, when done without permission it often resulted in forceful retaliation.

D. Territorial Connection

16. I believe that the Sinixt have continuously occupied and used the resources of our Territory for approximately 5000 years.
17. The Sinixt Territory is unceded.
18. Reflected in the Sinixt way of life, cosmology, and social organization is the desirability of our movement within our Territory as an integral way of fulfilling valued cultural, spiritual, social and economic objectives.
19. One of the distinguishing features of the Sinixt is the manner in which we have adapted to ecological conditions within our Territory by observing seasonal patterns of resource use including root harvesting, berry picking, medicine gathering and other plant/food resource harvesting in the spring and summer; as well as fishing and hunting year-round.
20. Associated with the Sinixt seasonal patterns of resource use has been a seasonal pattern of movement within our Territory.

21. The Sinixt have been and remain connected to our Territory through a cosmology which has representation in a unique set of symbols and myths demonstrative of the Sinixt's spiritual connection to our territory. This cosmology is integrally related to the Sinixt's seasonal pattern of movement and resource consumption within our Territory.
22. The Sinixt connection to our Territory has been and continues to be underscored by the *wbuplak'n* - a religious imperative to discharge a responsibility with respect to the ecological management and conservation of land-based resources.
23. The Sinixt have regarded, and continue to regard, our movements for subsistence within our Territory as religious rather than simply economic in nature. Within the traditional and presently practiced cosmology of the Sinixt, there exists a cultural system that requires the seasonal movement of individuals and groups to spiritual places where physical sustenance is available from the natural world.
24. The Sinixt have historically conducted, and continue to conduct, a ritual and ceremonial lifestyle that caused us to move and aggregate throughout our Territory. Elements of this lifestyle have included First Salmon and First Berry ceremonies, Root Feasts, ceremonies for the succession of new chiefs and female puberty and other life cycle rituals.
25. The Sinixt have maintained an organized political structure, with a single leader, a council of sub-leaders and an assembly of the people as a whole. The entire council traditionally met during the winter season when groups of people were congregated. The Sinixt wintered each year at established villages or settlements throughout the northern reaches of our Territory. Many of the burial sites of our ancestors are located near these established seasonal settlements.
26. The Sinixt have historically moved throughout our Territory to collectively defend ourselves and our Territory from intrusion and predation by unwelcome outsiders.
27. The Sinixt have historically carried on trade for ordinary household goods, foodstuffs, and prestige and luxury items. We traveled for trading purposes both inside and outside of our Territory and traded with partners including peoples from the northwest coast to the west, other plateau peoples, plains people to the east and peoples of the Great Basin to the south.
28. Deeply embedded in Sinixt culture is a migratory pattern of land and resource use that took us north and south along our Territory, a territory that had no border at the 49th parallel for thousands of years.

E. Canada – U.S.A. International Border

29. The traditional Territory of my people was divided by the establishment of the Canada-USA border along the 49th parallel in 1846.
30. Neither the Sinixt Nation nor any representative thereof was ever consulted regarding the establishment of this border, which has divided our Territory, fractured our people and alienated us from our Territory - the primary source of our cultural identity.
31. Due to the establishment of the border and other historical factors such as Canada's failure to provide adequate reserve land for the Sinixt and the disenfranchisement and reassignment of tribal identities under the *Indian Act*, my people were cut off from our Territory north of the 49th parallel. I believe this resulted in a reduced presence of Sinixt within our traditional Territory north of the 49th parallel. That reduced presence later came to be filled by other aboriginal peoples such as the Okanagan and the Ktunaxa through pre-established cultural ties amongst our respective Nations.
32. Notwithstanding the impact of the border, my people have maintained strong cultural, spiritual and political ties to our traditional Territory and continue to travel throughout our Territory for a variety of purposes such as harvesting resources and maintaining cultural, kinship, spiritual and political ties.
33. It is the Territory itself and the deep-rooted association with and responsibility to that land that is fundamental to the identity of our people as Sinixt or Arrow Lakes people.

F. Damming of our Waterways

34. With the damming of the Columbia River within and south of our Territory and the consequential loss of annual salmon runs in our Territory, the Sinixt suffered a loss of a critical resource in relation to which we exercised a cultural responsibility. This loss was marked and mourned by the Sinixt at a Ceremony of Tears in 1942, an event that is depicted by the photograph attached as Exhibit 6 to this My Affidavit.
35. The end of salmon runs had an enormous impact on the social, economic, spiritual and cultural lives of our people.

G. Ongoing Connection to Our Territory

36. The Sinixt have never abandoned, and in fact continue to maintain, our connection to our Territory. We continue to uphold our responsibilities in that regard pursuant to our cultural laws.

37. The practices, customs and traditions carried out by the Sinixt entail contemporary travel within our traditional territory (including that portion of our Territory which lies in present-day Canada) for the following purposes:
- a. Performing ceremonies such as marriage, memorial services, births and birth customs;
 - b. Attending Lardeau fish ceremonies;
 - c. Touring the territory with Sinixt elders, including visiting artefact collections;
 - d. Gathering berries, roots, moss and basket materials;
 - e. Hunting and fishing;
 - f. Attending sweat lodges;
 - g. Attending ceremonial dances;
 - h. Providing cultural presentations about landscape stories;
 - i. Developing and delivering Sinixt-based educational curriculum to British Columbia School Districts 8, 20, 51 and 19;
 - j. Protecting cultural sites, burial sites, heritage sites and historical sites;
 - k. Participating in archaeological digs/studies and engaging in consultations regarding same;
 - l. Providing cultural content with respect to mapping projects;
 - m. Participating in the establishment and ceremonial inauguration of museum exhibits;
 - n. Participating in cultural consultations and presentations with post-secondary institutions and professionals;
 - o. Participating in cultural consultations and presentations in relation to the operation of the Mir Peace Centre;
 - p. Participating in the activities of British Columbia's Species at Risk Bureau including attendance at management and strategy tables; regional, provincial and federal consultations and meetings regarding resource protection; and commissioning relevant scientific studies into the management, restoration and protection of species at risk in relation to

which the Sinixt have exercised an aboriginal right of hunting and conservation;

- q. Attending meetings and conferences with the Columbia Power Corporation, BC Hydro and the Canadian Columbia River Inter-tribal Fisheries Commission for the purposes of participating in fishery conservation efforts, such as tagging, telemetry, scientific study, and publication of literature;
- r. Participation in membership, governance and representation of local watershed groups and associations for the purposes of protection of Sinixt cultural interests and management of water resources;
- s. Repatriating and reburying 61 complete and fractured skeletal remains of Sinixt ancestors;
- t. Engaging in dialogue and liaison with settler culture to educate same with respect to historical and present facts and circumstances of the Sinixt people;
- u. Working with several environmental groups involved in critical habitat studies, ecosystem and habitat protection projects with a focus on restoration and sustainability of resources as a whole;
- v. Establishing and administering the Sinixt Nation Society under the laws of British Columbia for the purpose of providing education with respect to the historical, social, ceremonial and preservationist characteristics of the Sinixt people; and administering the interests of the Sinixt Nation;
- w. Engaging with other First Nations of British Columbia and developing protocol for the inclusion of aboriginal content in post-secondary educational curriculum;
- x. Participating in the environmental planning of the Commission on Resources and Environment;
- y. Engaging with municipal government representatives where municipal permits threaten to hamper Sinixt interests and resources; and
- z. Participating in park expansion and development projects to protect species (e.g. grizzly bears) and land/cultural resources (e.g. ancient Sinixt pictographs).

H. Sinixt Elders and Oral History

38. Eva Orr was a revered Sinixt elder with extensive knowledge of the oral and contemporary history of the Sinixt people and their practices in relation to the Sinixt Territory. Eva Orr died in early 2006.
39. My mother, Levina Lum, Leonard George, Annie Kruger, Francis Romero, Koos Swan and Corrine Marchand were also Sinixt elders with extensive knowledge of the oral and contemporary history of the Sinixt people and their practices in relation to the Sinixt Territory. They are all recently deceased.
40. There are few living persons who can impart a fraction of the knowledge that these elders possessed and they too are senior in age.
41. Throughout my childhood and my adult life, my mother and other Sinixt elders have told me *chop tikwils*.
42. *Chop tikwils* are stories handed down by way of oral tradition in accordance with a strict code that each story remain unaltered upon being retold. The *chop tikwils* cover a broad range of subjects: history, cosmology, ecology and morality – all of which inform the cultural memory and identity of my people. The *chop tikwils* contain subtle messages of how we are supposed live as human beings. They speak to the emotional position of mankind in relation to the human experience.

I. *Nkegio-xten* at Perry Ridge

43. Many of the *chop tikwils* relate to our Northern Territory, including the creation story of Frog Mountain, which overlooks Vallican, British Columbia, and embodies the oral history of how the legendary Frog saved the Sinixt people during a time of terrible suffering. This story was told to me by Eva Orr as we paid out last respects at an ancestral reburial.
44. Vallican, British Columbia, is an ancient Sinixt village and burial ground located at the southwestern edge of Perry Ridge. The Sinixt name for this village is *nkegio-xten*.
45. The Sinixt name for Perry Ridge is *slhu7kin*.

J. Repatriation of Remains

46. In the late 1980s, the burial remains of Sinixt ancestors were uncovered in the course of road-building excavations in *nkegio-xten* (Vallican) at Perry Ridge in British Columbia.

47. The Sinixt responded to this discovery with determined advocacy and peaceful occupancy of the Perry Ridge burial site in a campaign to protect the site and effect the reburial of the discovered remains.
48. In taking action to repatriate the remains of our ancestors, the Sinixt acted pursuant to a cultural / religious responsibility in relation to our Territory and our ancestors.
49. Some of the remains unearthed at Perry Ridge were shipped abroad by local authorities for analysis, but they were later determined to be remains of Sinixt people and were thereafter returned by authorities to myself and fellow Sinixt for repatriation and reburial.
50. We, the Sinixt, have a cultural law that says you must, when you are done with this body, go back to the earth. When people go and dig up our ancestors and put them on shelves, in boxes, in macramé wall hangings, or use them for other types of decoration, it makes my ancestors break their cultural law. It is our responsibility, because we are the descendants of those people, to bring our ancestors home and rebury them and protect their resting places.
51. We, the Sinixt, continue to occupy our burial grounds at *nkegio-xten* at Perry Ridge and we continue to repatriate remains. To date, remains of 61 Sinixt ancestors have been repatriated.
52. The following documents, attached respectively as Exhibits to this My Affidavit, are press articles that were published in the early 1990s in relation to the Sinixt repatriation of remains in *nkegio-xten* (Vallican) at Perry Ridge:

EXHIBIT	DOCUMENT	DATE
7	Press Article, "Tribe Buries Bones, But Not its Past"	
8	Press Article, "Indian Relics Come Home"	October 4, 1990
9	Press Article, "Museum Returns Sinixt Remains," <i>The Province</i>	October 14, 1990

K. Caretaker Role

53. We, the Sinixt, have determined for ourselves that Robert Allen Watt is a member of our grouping.
54. The Sinixt have appointed Mr. Watt to the traditional role of guardian and caretaker in relation to the sacred Sinixt burial site at *nkegio-xten* (Vallican) at Perry Ridge in British Columbia.

55. The Sinixt, per Mr. Watt, currently have pending a Federal Court of Canada action against the Crown in which Mr. Watt, as Plaintiff, asserts an aboriginal right to enter and remain in Canada for the purpose of accessing the traditional Territory of the Sinixt. *Robert Allen Watt v. Her Majesty the Queen* is under Federal Court of Canada File T-1831-06 (“the Cross-Border Claim”).
56. The following documents, attached respectively as Exhibits to this My Affidavit, are press articles that were published in the early 1990s in relation to Mr. Watt’s assertion of aboriginal rights:

EXHIBIT	DOCUMENT	DATE
10	Press Article, “Nomadic Native Hopes to Find Canadian Home,” <i>The Province</i>	July 10, 1992
11	Press Article, “‘Extinct’ Native Man Battling Deportation”	May 25, 1992
12	Press Article, “Extinct Band Returns”	

L. Archaeological and Cultural Values on Perry Ridge

57. I have been told by Eva Orr, Sinixt Elder, and I do believe that there are, throughout Perry Ridge, vision questing / prayer sites, gathering sites and other sites related to the cultural practices and traditional ceremonies of the Sinixt.
58. These cultural sites on Perry Ridge include, but are not limited to, pit house sites and grounds for a gathering pursuant to the *smum iem* – a set of cultural dictates which prescribe the Sinixt women’s responsibility to landscape, pursuant to which Sinixt women engage in a huckleberry picking, dance, feast and prayer ceremony.
59. The Sinixt are concerned that clear-cut logging on Perry Ridge will have a negative value on the Sinixt’s interest in maintaining and preserving the archaeological and cultural values of Perry Ridge.
60. Our concern over the impact of logging on archaeological values was shared by the Vallican Archaeological Park Society as referenced in the July 6, 1989, letter from the Perry Ridge Water Users’ Association to the Ministry of Forests (Arrow Forest District), a true copy of which is attached as Exhibit 13 to this My Affidavit.
61. The Sinixt’s historical use of the site at *nkegio-xten* (Vallican) was confirmed by the Province of British Columbia per the Ministry of Municipal Affairs, Recreation and Culture, by way of its June 27, 1989, correspondence to the

Vallican Archaeological Park Society, a copy of which is attached as Exhibit 14 to this My Affidavit.

62. Several Sinixt burial sites (all of which are sacred sites) have been found at the base of Perry Ridge, including those at DjQj1 at the site at *nkegio-xten* (Vallican) [see Exhibit 82] as well as sites at the home of Austin Greengrass which were uncovered as a result of the Perry Ridge landslide of 1997 as described in *British Columbia v. Perry Ridge Water Users Association* (Parrett J.), unreported, (B.C.S.C.) and the related CBC News video report respectively attached as Exhibits 42 and 102 to this My Affidavit.

M. Plant and Wildlife Resources on Perry Ridge

63. The streams on Perry Ridge constitute spawning grounds for critically threatened fisheries such as bull trout (after which the Sinixt take their name), the critically endangered skulpin and other aquatic life in relation to which the Sinixt exercise aboriginal rights.

64. Perry Ridge sits in close proximity to Valhalla Provincial Park to fulfill a substantial wildlife corridor for goats, elk, deer, large cats and grizzly bears. We fear that the industrial development of this habitat would threaten these species, in relation to which the Sinixt exercise aboriginal rights.

65. One such species with which the Sinixt have traditionally had a close relationship is the mountain caribou, which now lies on the brink of extirpation. We, the Sinixt, are praying for our endangered mountain caribou to return.

66. Caribou feed on lichens.

67. Lichens are composite organisms consisting of a symbiotic association of a fungus with a photosynthetic partner, usually either a green alga or cyanobacterium.

68. I am told by Toby Spribille and I do believe that a previously undiscovered species of lichen has recently been discovered on Perry Ridge and there is potential for more discoveries of unique species like lichens that exist in the microclimates of Perry Ridge.

69. I am told by Toby Spribille and I do believe that these lichens are vulnerable to environmental disturbance as they exist in very unique microclimates which can be destroyed by road building and/or removal of trees.

70. In addition to lichen, Perry Ridge is home to a blue-listed endangered species of vascular plant, as described in Mr. Spribille's report attached as Exhibit 101 to this My Affidavit.

71. I believe that we cannot afford to alter the landscape of Perry Ridge on an industrial scale in the absence of having conducted comprehensive surveys of present biological and ecological conditions. The Sinixt have asked for studies and surveys in that regard and we have continued to be ignored. The landscape within our Territory around us has been increasingly threatened, except for here at Perry Ridge. Everything at Perry Ridge is important for us and we have a responsibility to it.

N. No Consultation on Perry Ridge

72. The Sinixt have demanded, since 1997, that they be consulted with respect to industrial development on Perry Ridge.

73. The following set of documents, attached respectively as Exhibits to this My Affidavit, constitute true copies of the correspondence as between the Sinixt and the Province of British Columbia with respect to the Sinixt demand for consultation over industrial development on Perry Ridge and related matters:

EXHIBIT	DOCUMENT	DATE
15	Letter from the Sinixt Nation to Arrow Forest District	February 5, 1997
16	Letter from the Sinixt Nation to Arrow Forest District	July 4, 1997
17	Statement by the Sinixt Nation to the Local Resource Use Planning Table for Perry Ridge	September 20, 1999
18	Letter from the Sinixt Nation to Ministry of Forests	September 26, 2000
19	Letter from the Sinixt Nation to Ministry of Forests	July 18, 2002
20	Letter from counsel for the Sinixt Nation to the British Columbia Attorney General	November 30, 2006
21	Letter from the British Columbia Attorney General to counsel for the Sinixt Nation	January 9, 2007
22	Letter from the British Columbia Ministry of Agriculture and Lands to counsel for the Sinixt Nation	March 16, 2007

23	Letter from counsel for the Sinixt Nation to the British Columbia Attorney General	February 22, 2008
24	Letter from the Attorney General to counsel for the Sinixt Nation	May 6, 2008
25	Letter from the Ministry of Aboriginal Relations and Reconciliation to counsel for the Sinixt Nation	June 9, 2008
26	Letter from the Sinixt Nation to the Minister of Environment	August 7, 2008
27	Letter from counsel for the Sinixt Nation to the Ministry of Aboriginal Relations and Reconciliation	August 11, 2008
28	Letter from the Ministry of Aboriginal Relations and Reconciliation to counsel for the Sinixt Nation	September 11, 2008
29	Letter from counsel for the Sinixt Nation to Ministry of Forests and Range	October 7, 2008
30	Letter from counsel for the Sinixt Nation to Ministry of Aboriginal Relations and Reconciliation	March 7, 2009
31	Letter from Ministry of Aboriginal Relations and Reconciliation to counsel for the Sinixt Nation	May 6, 2009
32	Letter from counsel for the Sinixt Nation to Ministry of Attorney General	June 3, 2009
33	Email from Ministry of Aboriginal Relations and Reconciliation to counsel for the Sinixt Nation	August 20, 2009
34	Letter from counsel for the Sinixt Nation to B.C. Attorney General and Ministry of Environment	April 29, 2010
35	Letter from Ministry of Environment to counsel for the Sinixt Nation	June 10, 2010

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| 36 | Letter from counsel for the Sinixt Nation to
Ministry of Forests and Range | July 6, 2010 |
| 37 | Letter from Ministry of Forests and Range to
counsel for the Sinixt Nation | July 21, 2010 |

O. Establishment of Protest Camp

74. Attached as Exhibit 38 to this My Affidavit is a copy of a document related to BC Timber Sale Licence A80073 (“the Licence”) which I obtained from the internet.
75. The Province, per the Ministry of Forest and Range, BC Timber Sales, issued the Licence on September 23, 2010, to Sunshine Logging (2004) Ltd. without any consultation with the Sinixt.
76. The Sinixt have declared Perry Ridge a Wilderness Preserve and have promulgated that declaration by way of the publicized document attached as Exhibit 39 to this My Affidavit.
77. On October 25, 2010, the Directors of the Sinixt Nation Society adopted a Resolution, a copy of which is attached as Exhibit 40 to this My Affidavit, to establish and occupy a protest camp (“the Camp”) so as to peacefully express our objection against the issuance of the Licence in the absence of consultation with the Sinixt.
78. By letter of October 26, 2010, a copy of which is attached as Exhibit 41 to this My Affidavit, the Sinixt jointly informed the Ministry of Forest and Range and Sunshine Logging Ltd. of the said Resolution and the Camp.

P. An Exercise of Sinixt Cultural Responsibility

79. The October 25, 2010, Resolution of the Sinixt Nation Society was passed in accordance with the *wbuplak'n*: the Sinixt’s cultural law of the land which sets out our territorial responsibility to all land, water, plant, animal and cultural resources within the Sinixt Territory.
80. The *wbuplak'n* is the highest territorial and cultural legal doctrine of the Sinixt.
81. Within the *wbuplak'n* is subcategory of law pertaining to Sinixt women called *smum iem* – which means “belongs to the women”.
82. It was wished upon by my elders that *smum iem* would bring back the huckleberry ceremony for the women - that’s a ceremony that was only for the women, which took place on Perry Ridge.

83. Under *smum iem*, women hold a special relationship with the land and that means they have a higher responsibility to cultural sites, gathering sites, the landscape in general, community and cultural practice.
84. As women of the Sinixt, that means that culturally, we have tried to exercise our responsibility to the landscape – both with respect to Perry Ridge and beyond.
85. Perry Ridge, however, is particularly significant to the Sinixt as it represents that last mid/low elevation forest area within our Territory that has not been ecologically undermined by industrial development. Perry Ridge is an island in a landscape that has been compromised by logging and damming of our land and water resources.
86. The Sinixt’s responsibility with respect to Perry Ridge is heightened by Perry Ridge’s geological and hydrological vulnerabilities as well as by the significant archaeological, cultural, wildlife and plant values on Perry Ridge.
87. In the current context of the Sinixt as we stand in relation to our Territory, Perry Ridge is the seat of our responsibility under the *wbuplak'n* and *smum iem*. It is all that is left. I believe that Perry Ridge embodies so much of what ties my people to the land culturally. Perry Ridge is the last example of that bond; the last holdout; the last place for us to be connected with our cultural responsibility.

Q. Concerns Regarding Logging and Road Building on Perry Ridge

88. I believe Perry Ridge to be fraught with geological and hydrological hazards. My belief in that regard is based on the following documents that are respectively attached as Exhibits to this My Affidavit.

EXHIBIT	DOCUMENT	DATE
42	<i>British Columbia v. Perry Ridge Water Users Association</i> (Parrett J.), unreported, (B.C.S.C.)	November 13, 1997
43	Letter to Hon. J. Sawicki from Dr. J.M. Ryder	September 20, 2000
44	Geological Hazards of the Perry Ridge Benchlands – Dr. June Ryder	September 16, 2000
45	Risk Assessment and Geological Hazards, Perry Ridge Area – Dr. June Ryder	June 25, 2000
46	Hydrology Report for Perry Ridge – J. Allen Isaacson, Hydrologist	April 1996

47	Letter to Regional District of the Central Kootenay – Baumann Engineering	March 16, 1998
48	Perry Ridge Stream Channel Survey – S. Chatwin Geoscience Ltd.	January 12, 1999
49	Geological Hazards Mapping of the Slocan Valley, Phase 1	October, 1998
50	Perry Ridge Risk Assessment – Perry Ridge Technical Review Panel	January 31, 1999
51	Perry Ridge Hazard Assessment – Dr. Anthony A. Salway, P. Geo.	May 12, 2000
52	Review Slocan Valley Hazard Mapping – Nigel Skermer, M.Sc., P. Eng	October 25, 2002
102	Video: <i>Cover Story</i> CBC News	1998

89. The Sinixt are concerned that the proposed logging and road building under the Licence will exacerbate existing geological and hydrological hazards on Perry Ridge.

90. Furthermore, the Sinixt are concerned that the proposed logging and road building under the Licence will, through geological and hydrological processes, increase sedimentation so as to detrimentally affect Sinixt archeological sites, fisheries and other cultural, land and resource interests on Perry Ridge in relation to which the Sinixt exercise aboriginal rights.

91. On the basis of the information in Exhibits 42 and 102 to this My Affidavit, I believe that the Province of British Columbia has a history of obscuring and misleading matters with respect to the geological and hydrological risks on Perry Ridge. The Province's track record in that regard reinforces the Sinixt's interest in being consulted prior to the conclusion of any plans for logging and/or road building on Perry Ridge.

R. An Aboriginal People of Canada?

92. Andrea Geiger, B.A., J.D., M.A., Ph.D., is an Assistant Professor of History at Simon Fraser University in Burnaby, British Columbia, and has been so since September of 2005.

93. Dr. Geiger researched and authored a paper dated April 29, 1997, entitled "British Columbia Indians Should Not be Living in Washington State: The Manipulation

of Place, Family, Band Affiliation and Country in Canada's Identification and Extinction of the Arrow Lakes Band and Reserve, 1902 – 1953".

94. Dr. Geiger's paper, attached to her Affidavit filed in these and other proceedings, sets out the following facts, which I believe to be true:

- a. In 1902, one reserve was established by the Federal Crown for the Arrow Lake Indian Band at Oatscott, British Columbia ("the Oatscott Reserve").
- b. The Oatscott Reserve land, consisting of inaccessible precipitous granite bluffs, was inadequate and occupation of that land was inimical to the material sustenance of the Sinixt and incompatible with their traditional patterns of seasonal rounds within the northern and southern portions of their Territory.
- c. The Federal Crown failed to follow up on a request by a group of Sinixt for a second reserve on land that Canada noted as a primary fishing and camping site that had been long occupied by Sinixt forefathers.
- d. The Federal Crown invoked the refusal of the Sinixt to move to or remain on the Oatscott Reserve as evidence of disinterest in maintaining their identity as Canadian "Indians".
- e. The Federal Crown used this and other flawed criteria to manipulate the determination of "Indian" identity in relation to the Sinixt.
- f. On the basis of these flawed determinations, the Federal Crown determined in 1953 that the Arrow Lake Band was extinct. Consequentially, the Oatscott Reserve land established in 1902 was terminated by the Federal Crown in 1956 and the land reverted to the Province of British Columbia.

95. Attached as Exhibit 53 to this My Affidavit is a true copy of the Order in Council dated January 5, 1956, by which the Government of Canada declared the Arrow Lake Band of Indians to have become extinct and ordered the Arrow Lake Reserve to be transferred to the Province of British Columbia.

96. The Sinixt assert that they are an aboriginal people of Canada within the meaning of Section 35 of the *Constitution Act*, 1982.

97. In various correspondence attached as Exhibits 22, 25, 33, 37 to this My Affidavit, the Province of British Columbia has taken the position that:

...it is not clear to the Province at this time that the Sinixt are 'an aboriginal people of Canada' as referred to in Section 35 of the *Constitution Act*, 1982.

98. Attached as Exhibit 54 to this My Affidavit is an August 9, 1995, letter from Ronald A. Irwin, then Minister of Indian Affairs and Northern Development to the Coalition of Supporters of the Sinixt/Arrow Lakes Nation. In this letter, Mr. Irwin states:

The Arrow Lakes Band ceased to exist as a band for the purpose of the Indian Act when-its last member died on October 1, 1953. By this is meant that, as a consequence of death and transfer to other bands, there were no longer any persons who qualified for membership in the Arrow Lakes Band under the provisions of the Indian Act. It does not, of course, mean that the Sinixt people ceased to exist as a tribal group.

99. In the context of the Cross-Border Claim, the Federal Court of Appeal has issued a December 30, 1998, judgment in *Watt v. Canada (Minister of Citizenship and Immigration)* [1998] F.C.J. No. 1931, a copy of which is attached as Exhibit 55 to this My Affidavit, wherein the Court states at paragraph 19:

Instead there will have to be a number of findings of fact which have as yet not been made. Without attempting to list these exhaustively, they will include findings such as the following. Is the appellant a member of an "aboriginal people of Canada" in order to be entitled to assert a right under section 35 of the Constitution Act, 1982?

S. Consultation: CORE

100. The Sinixt were the recognized First Nation representatives at the BC Government Commission on Resource and Development ("CORE") Planning Table, Slocan Valley Pilot Project.
101. The CORE Table was established by then Ombudsman Stephen Owen as a pilot project to deal with contentious resource and environment issues in the West Kootenay Region by facilitating community participation in developing and advocating the implementation of land and resource management plans which are environmentally, economically and socially sustainable. Attached as Exhibit 56 to this My Affidavit are the terms of reference for the CORE Table.
100. Attached as Exhibit 57 to this My Affidavit is an August 10, 1993 facsimile from CORE to Slocan Valley participants, including Marilyn James for the Arrow Lakes Nation.
101. Attached as Exhibit 58 to this My Affidavit is an October 16, 1995, submission by representatives at the Slocan Valley CORE Table, including Marilyn James for the Sinixt Nation.

T. Consultation: Premier’s Summit

- 102. By his letter dated September 22, 1998, a true copy of which is attached as Exhibit 59 to this My Affidavit, then British Columbia Premier Glen Clark invited the Sinixt Nation among other First Nations to participate in the Premier’s Summit on Economic Opportunity for the Kootenays.
- 103. I accepted Mr. Clark’s invitation as referenced above and did so participate in the Summit.

U. Consultation of the Sinixt by BC Hydro

- 104. The British Columbia Hydro and Power Authority (“BC Hydro”) is a Crown corporation and agent of the Crown operating under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212.
- 105. BC Hydro has commenced First Nations consultations with the Sinixt Nation on the following matters:
 - a. the purchase by BC Hydro of an undivided one-third interest from Teck Metals Ltd. and Teck Resources Ltd. in the Waneta Dam on the Pend d’Oreille River and its associated assets (the “Waneta Transaction”);
 - b. the renegotiation of the Columbia River Treaty;
 - c. the renegotiation of the Columbia River Non-Treaty Storage Agreement;
 - d. the Hugh Keenleyside Dam spillway gates replacement project; and
 - e. the construction of a new double circuit 500 kV transmission line (“the Selkirk Intertie Project”).
- 106. The following documents, attached respectively as Exhibits to this My Affidavit, relate to BC Hydro’s consultation with the Sinixt over the Waneta Transaction:

EXHIBIT	DOCUMENT	DATE
60	Letter from B.C. Hydro to the Sinixt Nation Society	June 17, 2009
61	Letter from counsel for the Sinixt Nation to B.C. Hydro	September 7, 2009
62	Letter from BC Hydro to counsel for the Sinixt Nation	September 15, 2009

63	Letter from BC Hydro to counsel for the Sinixt Nation	September 29, 2009
64	Letter from counsel for BC Hydro to counsel for the Sinixt Nation	December 7, 2009
65	Letter from BC Hydro to the Sinixt Nation Society	April 28, 2010
66	Memorandum of Argument of BC Hydro in <i>The Sinixt Nation vs. BCUC, B.C. Hydro, et al</i> , B.C. Court of Appeal File No. CA038418	October 26, 2010

107. The following set of documents, attached respectively as Exhibits to this My Affidavit, relate to BC Hydro's consultation with the Sinixt over the Columbia River Non-Treaty Storage Agreement:

EXHIBIT	DOCUMENT	DATE
67	Letter from BC Hydro to the Sinixt Nation Society	August 10, 2010
68	Letter from BC Hydro to counsel for the Sinixt Nation	August 20, 2010
69	Letter from BC Hydro to the Sinixt Nation Society	September 22, 2010
70	Letter from BC Hydro to the Sinixt Nation Society	October 14, 2010

108. The following documents, attached respectively as Exhibits to this My Affidavit, relate to BC Hydro's consultation with the Sinixt over the Hugh Keenleyside Dam spillway gates replacement project:

EXHIBIT	DOCUMENT	DATE
71	Letter from BC Hydro to counsel for the Sinixt Nation	August 9, 2010
72	Letter from BC Hydro to counsel for the Sinixt Nation	September 22, 2010

109. The following document, attached as Exhibit 73 to this My Affidavit, relates to BC Hydro's consultation with the Sinixt over the Selkirk Intertie Project: Letter from B.C. Hydro to the Sinixt Nation Society dated September 30, 2010.

110. The following documents, attached as Exhibit 74 to this My Affidavit, relate to BC Hydro's consultation with the Sinixt over the Columbia River Treaty: Letters from BC Hydro to counsel for the Sinixt Nation dated July 29, 2010 and September 24, 2010.

V. Expert Reports

111. The Sinixt were Intervenor in BC Utility Commission proceedings relating to the Waneta Transaction. In the context of those proceedings, the Sinixt adduced the following expert evidence reports which are attached respectively as Exhibits to this My Affidavit:

EXHIBIT	DOCUMENT	DATE
75	Expert Opinion Letter of Andrea Geiger (BCUC Waneta Exhibit C18-7)	November 11, 2009
76	Expert Opinion of Gordon Mohs (BCUC Waneta Exhibit C18-8)	November 11, 2009
77	Expert Opinion of Nathan Goodale (BCUC Waneta Exhibit C18-9)	November 12, 2009

112. The Sinixt are currently Intervenor in BC Utility Commission proceedings relating to the Hugh Keenleyside Dam spillway gates replacement project. In the context of those proceedings, BC Hydro adduced the following expert evidence reports which are attached respectively as Exhibits to this My Affidavit:

EXHIBIT	DOCUMENT	DATE
78	Mohs, Gordon 1977 <i>Post-Inundation Archaeological Survey Studies of the Arrow Lakes</i> , on file with Archaeology Branch, Victoria	1977
79	Bouchard, Randy and Dorothy Kennedy 2000 <i>First Nations' Ethnography and Ethnohistory in British Columbia's Lower Kootenay/ Columbia Hydropower Region</i> , unpublished Manuscript on file at the B.C. Archaeology Branch, Victoria, B.C.	2000
80	Bouchard and Kennedy 2005 <i>First Nations' Aboriginal Interests and Traditional use in the Waneta Hydro-electric Expansion Project Area: A Summary and Analysis of Known and Available Background Information</i>	2005

113. The Sinixt also have in our collection the following anthropological documents which are attached respectively as Exhibits to this My Affidavit:

EXHIBIT	DOCUMENT	DATE
81	Prehistoric Settlement Patterns in the Columbia/Lakes Region of Southeastern British Columbia and Northeastern Washington by Gordon Mohs	December 1982
82	Vallican Archaeological Site DjQj1: A Synthesis and Management Report by Morley Eldridge	April 10, 1984
83	Lakes Indian Ethnography and History by Bouchard and Kennedy	August 1985
84	Letter from Gordon Mohs: To Whom it May Concern	May 29, 1992

W. British Columbia Parks Acknowledgement of the Sinixt

114. On March 11, 2008, I caused a computer internet browser to be directed at the British Columbia Parks website [<http://www.env.gov.bc.ca/bcparks/>] whereby a search option exists. A search on the said website of the term Sinixt yielded search results linked to 13 documents, excerpts of which are attached as Exhibits to this my Affidavit as follows:

Exhibit	Document	Date	Excerpted pages at which Sinixt are referenced
85	Management Plan for Granby Provincial Park	August 2001	10
86	Draft Kootenay Region Background Report for Kokanee Glacier Provincial Park	January 2004	16, 36
87	Management Plan for Kokanee Glacier Provincial Park	February 2004	4, 14, 36
88	Management Plan for Goat Range Provincial Park	September 2004	17, 73, 74, 77, 78
89	Valhalla Provincial Park Management Plan Draft Background Document	December 2004	27,46

90	Draft Management Plan for Valhalla Provincial Park	January 2005	5, 18
91	Proposed Gilpin-Morrissey Wildlife Management Area Background Report	September 2007	2
92	Champion Lakes Provincial Park	March 11, 2008	2
93	Kokanee Creek Provincial Park	March 11, 2008	2
94	Nancy Greene Provincial Park	March 11, 2008	2
95	Roseberry Provincial Park	March 11, 2008	2
96	Syringa Provincial Park	March 11, 2008	2

X. Colville Confederacy

115. The Confederated Tribes of the Colville Reservation (“the Colville Confederacy”) consists of 12 distinct aboriginal tribes, including the Sinixt.
116. By a United States Presidential Executive Order of April 9, 1872, these 12 tribes were forcibly amalgamated to live on a Washington state reservation allotted by the United States government in 1872 (“the Amalgamation”).
117. The constituent tribes of the Colville Confederacy have varying ethnic, linguistic, religious and historical backgrounds as well as varying ancestral territories.
118. The Sinixt have retained their ethnic and tribal identity as Sinixt or Lakes, notwithstanding the Amalgamation.
119. The Colville Confederacy takes the position, which I believe to be true, that none of the constituent tribes of the Colville Tribes were consulted with respect to the Amalgamation.
120. It is my observation and belief that individual Sinixt do not identify with the Colville Confederacy as an aboriginal people or an aboriginal tribe. The Colville Confederacy is a relatively recent phenomenon: the result of a political arrangement unilaterally carried out by the United States government in the

absence of consultation with the affected indigenous people. In contrast, the Sinixt identify as a tribe by virtue of their common ancestry, language, religion, heritage and history dating back thousands of years.

121. The history of the Amalgamation, as articulated by the Colville Confederacy on their website, is attached to this My Affidavit as Exhibit 97 along with a document posted on the same website entitled “A Proclamation Celebrating 125 Years of Survival 1872-1997 by Honorable Joseph A. Pakootas, Chairman of the Colville Business Council.”
122. Some of the tribal constituents of the Colville Confederacy, such as the Nez Perce, have no connection to Canada at all, unlike the Sinixt/Lakes, 80% of whose claimed traditional territory lies north of the Canada-United States border.
123. The Confederated Tribes of the Colville Reservation are administered by the Colville Business Council (“the CBC”).
124. The CBC is a business council which administers the affairs of its constituent tribes with respect to the Colville Reservation.
125. Attached as Exhibit 98 to this My Affidavit is a true copy of the Constitution and Bylaws of the Colville Confederacy.
126. The Colville Confederacy does not, as a matter of right, represent the rights and interests of its constituent tribes with respect to matters extraneous to the business of the Colville Reservation.
127. For example, the Nez Perce, albeit a constituent tribe of the Colville Confederacy, have holdings, rights and interests outside of the Colville Confederacy and outside of Washington.
128. The Nez Perce act autonomously and independent from the Colville Confederacy with respect to the pursuit and enjoyment of these extraneous interests.
129. The Colville Confederacy may govern the Sinixt with respect to matters pertaining to the Colville Reservation in the United States. But on matters extraneous to the administration of the Colville Reservation in the United States, the Colville Confederacy has no representational rights or governing authority over the Sinixt/Lakes.
130. The Colville Confederacy has unilaterally purported to represent the Sinixt on matters relating to the Sinixt’s aboriginal rights in Canada. For example, in 1999, the Colville Confederacy purported to act on behalf of the Sinixt in asserting that the Sinixt have a right to be consulted with respect to a proposed development at Cascade Falls in British Columbia. Attached as Exhibit 99 to this My Affidavit is

an undated copy of the Colville Tribes submission to British Columbia's Environmental Review Officer regarding the Cascade Falls issue.

131. The Sinixt have never acceded to representation by the Colville Confederacy with respect to matters of Canadian aboriginal rights. Because the Colville Business Council has purported to act on our behalf without authority, the Sinixt felt compelled to assert, in no uncertain terms, our autonomy with respect to the pursuit by the Sinixt of our aboriginal rights in Canada.
132. By letter to the CBC dated October 6, 2006, the Sinixt asserted their independence from the Colville Confederacy with respect to the pursuit by the Sinixt of their aboriginal rights in Canada. Attached as Exhibit 100 to this My Affidavit is a true copy of the said letter.
133. The Sinixt act independently and autonomously from the Colville Confederacy in the assertion of the Sinixt's aboriginal rights in Canada.

Y. The Sinixt Nation is Impecunious

134. The activities, financial and otherwise, of the Sinixt Nation in Canada are carried on through the Sinixt Nation Society, a society incorporated under the laws of British Columbia.
135. Neither the Sinixt Nation nor the Sinixt Nation Society has the financial means to engage in the desired assertion of our aboriginal rights in Canada.
136. The Sinixt, per Mr. Watt, currently have pending, and are awaiting judgment from the Federal Court of Canada on an application for advance costs in the context of the Cross-Border Claim.

Z. Interim Relief

137. The Petitioners in these proceedings seek an interim order against the Crown and the Respondent, Sunshine Logging (2004) Ltd., staying the implementation of the Licence and prohibiting the Respondents from acting on the Licence pending the final determination of the Petitioners' judicial review application ("the Interim Order").
138. The Petitioners hereby undertake to abide by any order concerning damages that this Honourable Court may make if it ultimately finds that the granting of the Interim Order has caused damage to the Respondent(s) for which this Court considers the Petitioners ought to compensate the Respondent(s).

139. I swear this Affidavit in support of the assertion by the Sinixt of our right to be consulted with respect to Crown conduct that might adversely impact our aboriginal rights in relation to lands and resources.

SWORN BEFORE ME AT THE CITY OF)
NELSON, IN THE PROVINCE OF)
BRITISH COLUMBIA THIS 1st DAY)
OF NOVEMBER, 2010.)

_____)
A COMMISSIONER FOR TAKING)
AFFIDAVITS IN THE PROVINCE OF)
BRITISH COLUMBIA.)

MARILYN JAMES