Landmark Decision in *Cowichan Tribes* Case

On August 7, 2025, the British Columbia Supreme Court delivered a significant ruling in the case of *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490. This decision, which involved complex issues of Aboriginal title and rights, has far-reaching implications for Indigenous communities across the country.

What is this case about?

The Cowichan Tribes, along with the Stz'uminus First Nation, Penelakut Tribe, and Halalt First Nation, along with individual representatives, brought a representative action on behalf of all descendants of the historic Cowichan Nation. These plaintiffs sought declarations of Aboriginal title over approximately 1,846 acres of land, including a traditional summer village site known as Tl'uqtinus, located on Lulu Island in what is now the City of Richmond, British Columbia. The plaintiffs also claimed an Aboriginal right to fish for food on the south arm of the Fraser River.[1]

The defendants included Canada, British Columbia, the City of Richmond, the Vancouver Fraser Port Authority, the Musqueam Indian Band, and the Tsawwassen First Nation.

The plaintiffs did not ask for remedies against private third-party landowners in the claim area.[2]

Key Outcomes

The Court's decision was largely in favor of the Cowichan Nation. It granted declarations that the Cowichan Nation holds Aboriginal title to a significant portion of the claimed lands, roughly half of the area. The Court also recognized the Cowichan Nation's constitutionally protected Aboriginal right to fish for food on the south arm of the Fraser River.

Aboriginal Title and Crown Grants

The Court found that the Cowichan Nation has Aboriginal title to roughly half of the claimed lands, referred to as the Cowichan Title Lands. This included their historical village site and surrounding lands and, in a significant development in the law, coastal lands now submerged in water.[3]

The Court rejected arguments that the Cowichan Nation's Aboriginal title had been extinguished by subsequent grants to third parties. Over several decades, various parties, including the federal Crown, the City of Richmond, and various private parties, acquired the claimed lands in fee simple. The Court said that these grants were not valid because the Provincial Crown lacked the authority to make them

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[1] *Cowichan Tribes v Canada (Attorney General),* **2025 BCSC 1490** at paras 1-2 [*Cowichan Tribes*].

[2] ***Cowichan Tribes*** at para 3.

[3] ***Cowichan Tribes*** at paras 1241-1246, 1535–1538, 1573-1578, 1649-1653.

post-Confederation.[4] The Crown's actions to dispose of the lands, including through land grants and municipal tax sales, unjustifiably infringed on the Cowichan Nation's Aboriginal title.[5]

The court also rejected arguments that the fee simple titles held by Canada, Richmond and private parties were protected by having been registered under the *Land Titles Act*.[6]

The court also addressed overlapping Aboriginal rights claims by Musqueam Indian Band. Musqueam opposed the Cowichan Nation's claim, asserting historical control over the region. However, the Court found the Cowichan Nation's evidence of exclusive occupation more persuasive and rejected Musqueam's arguments.[7]

While discussion of the decision has largely focused on the implications for private property rights, the ruling did **not** automatically displace existing fee simple titles held by private individuals. Instead, the Court said that the Crown must negotiate with the Cowichan Nation to reconcile Aboriginal title with overlapping fee simple interests.[8]

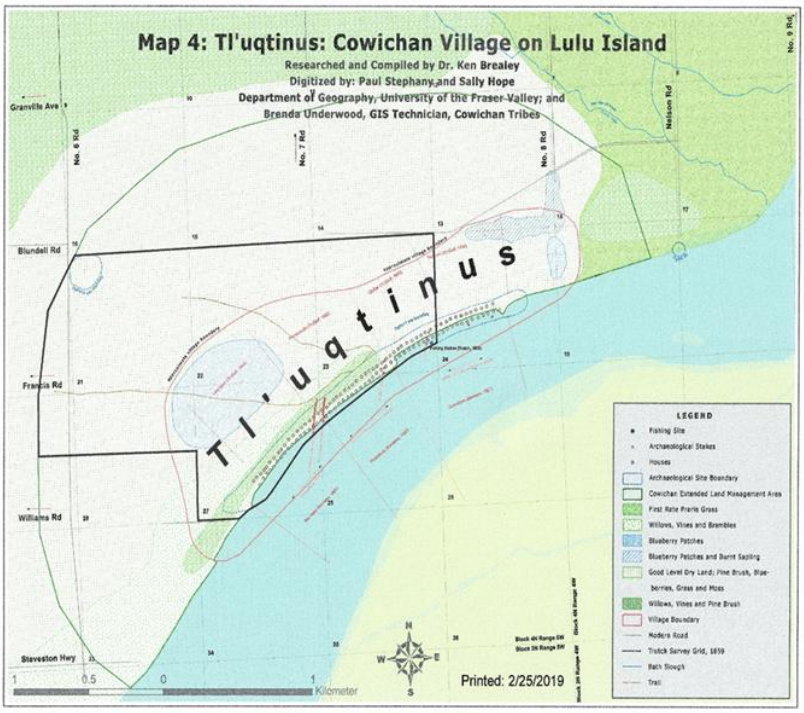


Figure 1 - A map of the claim area. The boundary of the lands that the Cowichan Nation established Aboriginal title over are outlined in black.[9]

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[4] ***Cowichan Tribes*** at paras. 2033, 2045, 2056, 2069, 2070, 2080-2081.
[5] ***Cowichan Tribes*** at paras 2670, 2852.
[6] ***Cowichan Tribes*** at paras 2258–2262, 2269.
[7] ***Cowichan Tribes*** at paras 1526-1534.
[8] ***Cowichan Tribes*** at paras 2205-2208.
[9] ***Cowichan Tribes***, Schedule A.

Limitations

Importantly, the Court held that it was not too late for the plaintiffs to bring their claim. In legal-speak, it was not "time-barred" by limitations statutes.

The court found that the ongoing nature of infringement of the plaintiffs' Aboriginal title means that the limitation period never began to run. In other words, the plaintiffs' rights are infringed on a daily, ongoing basis. The court also found that provincial limitations legislation could not constitutionally extinguish Aboriginal title.

The Court's findings about limitations periods are a major development in the law with potential wide-reaching implications for Aboriginal title and rights claims.[10]

Right to Fish

The Court recognized the Cowichan Nation's constitutionally-protected Aboriginal right to fish for food at the south arm of the Fraser River. The Court refused to restrict the right to specific species or seasons, reflecting a flexible and expansive approach to the recognition of rights based on historical practices.[11]

Remedies

The Court granted a series of declarations, which it said were necessary to clarify the Cowichan Nation's rights and legal position as they return to negotiations with the Crown.[12]

The Court's key declarations were that:

- The plaintiffs established the title and rights claim;
- The Crown had unjustifiably infringed the Cowichan Nation's title; and
- Canada and Richmond's fee simple titles were defective and invalid.

The Court did not make any declarations about fee simple lands owned by private third parties. Again, this issue was not in front of the court because the Cowichan Nation did not seek recovery of the private fee simple lands at this time. Rather, the Cowichan Nation sought a mechanism for negotiating the reconciliation of their Aboriginal title.[13]

Conclusion and Future Implications

This landmark decision is a significant step forward in recognizing and affirming Aboriginal title and rights in Canada. However, the full implications will only unfold over time. British Columbia and Richmond have already announced their intention to appeal, and other parties may follow suit.

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[10] ***Cowichan Tribes*** at paras 2958, 2980, 3049.
[11] ***Cowichan Tribes*** at paras 3285, 3471-3472, 3490, 3510.
[12] ***Cowichan Tribes*** at para 3538.
[13] ***Cowichan Tribes*** at para 3541

The *Cowichan Tribes* case also serves as a reminder of the complexities and challenges involved in Aboriginal title litigation. It highlights the potential benefits of pursuing legal recognition of Indigenous rights while emphasizing the need for nation-to-nation negotiations to achieve lasting reconciliation. As the legal landscape continues to evolve, this decision will undoubtedly influence future Aboriginal title and rights claims.

JFK Law has substantial experience with advancing Aboriginal title and rights claims on behalf of its clients through litigation and negotiation. If you would like further information about the *Cowichan Tribes* decisions and its implications for Aboriginal title and rights, we encourage you to contact us.