City of Richmond

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**NOTICE TO REGISTERED OWNER**

Please take note that the recent BC Supreme Court decision of *Cowichan Tribes v Canada*, 2025 BCSC 1490 made some very important decisions which could negatively affect the title to your property. A briefing paper prepared by City of Richmond staff is attached for your reference.

If you look at the draft map attached to the briefing, your property is located within the Claim Area outlined in green. For those whose property is in the area outlined in black, the Court has declared aboriginal title to your property which may compromise the status and validity of your ownership – this was mandated without any prior notice to the landowners. The entire area outlined in green is claimed on appeal by the Cowichan First Nations.

Given the serious implications of this Court decision and the pending appeal, The City is hosting an information session to be held on Tuesday October 28, 2025, at 7:00pm at Richmond City Hall. We hope that you can attend to learn more about this important situation.

Please phone us at 604-276-4123 or email us at mayorea@richmond.ca to confirm your attendance.

Yours truly,

Malcolm D. Brodie
*Mayor, City of Richmond*

8183586

Richmond

# *Cowichan Tribes v Canada (AG) et al*

This briefing note was prepared by the City of Richmond in response to the trial judgment of Madam Justice Young, indexed as *Cowichan Tribes v Canada*, 2025 BCSC 1490.

**Issue**: Four *Indian Act* bands brought a claim on behalf of all their members, and the members of a fifth – the Lyackson First Nation – as the historical descendants of the Cowichan Nation. Among other things, they claimed Aboriginal title over 1,846 acres (747 hectares) within the City of Richmond. See the attached aerial photograph, in which the claim area is delineated by the bright green semi-circle.

Justice Young delivered her judgment after trial on August 7, 2025. In the result, she granted declarations including that:

1. The plaintiffs established Aboriginal title to a portion (roughly 40 percent) of the claimed lands, despite the fact that the Crown had, in the period from 1871 to 1914, granted the entirety of those lands in fee simple. The declaration states that the plaintiffs' Aboriginal title extends to certain submerged lands (i.e., lands that, owing to shore erosion, now lie under the Fraser River). See the area delineated in the attached aerial photograph by the thick black line.
2. The Crown's grants of fee simple did not extinguish or otherwise displace Cowichan Aboriginal title, but instead constituted unjustifiable infringements of Cowichan Aboriginal title.
3. All fee simple titles and interests that the plaintiffs chose to attack – i.e., properties held by federal Crown entities and the City of Richmond – are defective and invalid.
4. The federal Crown owes a duty to the Aboriginal title holder to negotiate in good faith towards reconciliation of Canada's fee simple interests in the area with Cowichan Aboriginal title.
5. The provincial Crown owes a duty to the Aboriginal title holder to negotiate in good faith towards reconciliation of the Crown-granted fee simple interests held by third parties in the area, and the Legislature's having vested the soil and freehold interest in highways to the City, with Cowichan Aboriginal title.

The City of Richmond was the only party at trial arguing that the Crown grants of fee simple necessarily extinguished Aboriginal title. The federal and province Crowns were each labouring under litigation directives that constrained their ability to argue extinguishment: see page 18 of Canada's Directive and page 15 of BC's Directive. Commentators have referred to these directives in asking whether the Crown parties "pulled their punches" in defending the case: see Robin Junger's op ed "Did government pull its punches in the Cowichan Tribes court case?" in the *Vancouver Sun* (attached).

Moreover, none of the affected private landowners were given formal notice of the legal proceedings by the plaintiffs even though the relief sought would adversely affect their fee simple interests.

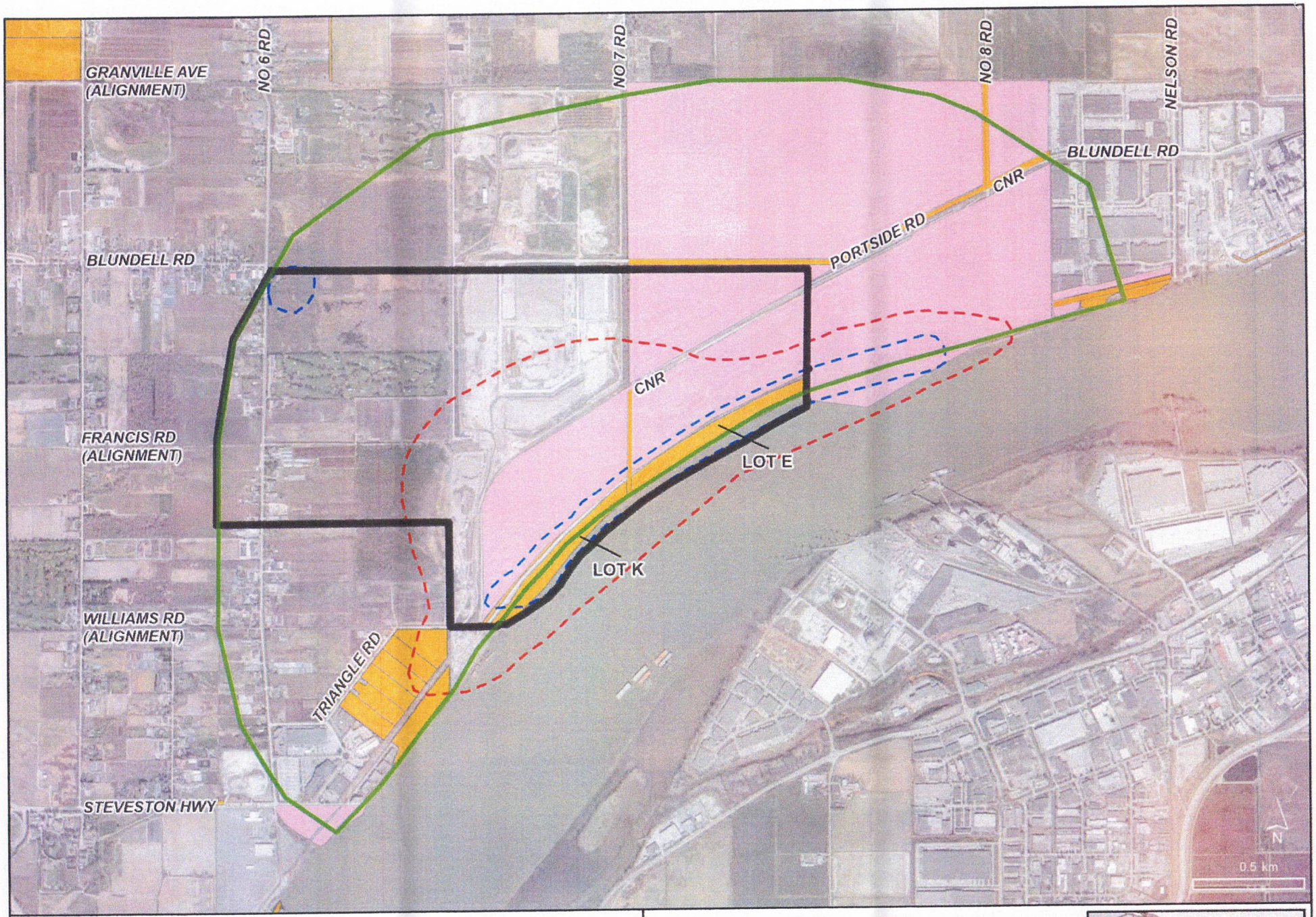
**Impact**: The decision marks the first time that the court has ruled on a claim for Aboriginal title: (a) over urban lands; (b) over lands that had been entirely granted in fee simple; and (c) over lands that the plaintiff's ancestors had abandoned roughly 150 years in the past.

The court's decision in those circumstances to grant a *present* (not historical or past) declaration of Aboriginal title, and to dismiss arguments based on the *Land Title Act* and the sanctity of the Registry under British Columbia's Torrens system, introduces enormous uncertainty into the security of any title in British Columbia.

**Appeal Proceedings**: Richmond filed a notice of appeal on September 3, 2025. In the following two days, all other parties – including the plaintiffs – filed their own appeals. This means that the Court of Appeal will be hearing from all sides about errors that the trial judge allegedly made. Specifically, because the plaintiffs have initiated their own appeal, it means that the Court of Appeal will be asked to expand the declared Aboriginal title area, so that it covers the entire claim area. (i.e., The plaintiffs are asking that the thick black line in the attached aerial photograph be made co-extensive with the bright green semi-circle in the same.)

Richmond is the only non-Crown landowner affected by the declarations who is party to the appeal proceedings. It will be making legal arguments that Aboriginal title and fee simple title cannot co-exist over the same lands. It will also be arguing that *in rem* remedies are not available to indigenous claimant groups in circumstances where innocent landowners have acquired land in fee simple.

DRAFT




# Lands of TI'uqtinus Claim Area

- Federally Owned Lands
- City of Richmond Owned Lands
- Archeological Site Boundary
- Village Boundary
- Aboriginal Title
- Claim Area Boundary

*areas are approximate and for geovisualization only

# Opinion: Did government pull its punches in the Cowichan Tribes court case?

*Robin Junger: One of the most important issues in this case was whether Aboriginal title was "extinguished" when the fee simple title (private ownership) was created. Yet the court expressly noted B.C. did not argue this*

By Robin Junger
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Industrial land in the area of southeastern Richmond that the courts have ruled belongs to four of the five First Nations that make up the Cowichan peoples. PHOTO BY NICK PROCAYLO /PNG

Last week, the B.C. Supreme Court issued what has been called a bombshell decision, finding that fee simple title (a.k.a private ownership) in certain land in Richmond is "deficient and invalid" because of a finding of Aboriginal title.

Attorney General Niki Sharma jumped immediately to announce an appeal after considering the nearly thousand-page decision "over the weekend."



While many are quick to question the judgment, precious little attention is being given to what positions government actually took in the case. So while the attorney general said in a media release that "we disagree strongly with the decision" and are "...committed to protecting and upholding private property rights," this warrants a close look.



One of the most important issues in this case was whether Aboriginal title was "extinguished" when the private ownership was created over the lands by the government in the 1800s.

Yet the court expressly noted B.C. did not argue this, stating: "B.C. does not argue extinguishment. Rather, B.C. says the content of any Aboriginal title rights that the Cowichan may have today is necessarily limited by the fee simple interests."

Similarly, the federal government also backed off this issue. The court stated: "Canada initially pled extinguishment but abandoned its reliance on this defence in its amended response to civil claim filed Nov. 22, 2018."

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If B.C. and Canada are in support of protecting private property rights, one may ask why they would pull their punches on this key legal issue.

artists opting in for Ticketmaster Face Value Exchange

To answer that question, one should look at the little known "civil litigation directives" that both governments have established to guide their lawyers in court cases involving Indigenous groups.

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Heritage act changes to have sweeping effect on land development in B.C.

The B.C. version of the directives was established by Premier David Eby when he was attorney general. They state: "The attorney general of British Columbia has developed these directives on civil litigation involving Indigenous Peoples ... to ensure government lawyers take an approach to litigation that upholds the honour of the Crown and Crown obligations to Indigenous peoples and seek negotiated resolutions that uphold Indigenous human rights and Aboriginal rights ... unilateral extinguishment is not consistent with the honour of the Crown or with the UN Declaration. ... The province will not advance arguments based upon the unilateral extinguishment of Aboriginal rights."

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Quick dismissal for complaint over replacement of Vancouver city manager



B.C. is not alone on this. The corresponding federal directives state: "The principles discourage certain long-standing federal positions, including relying on defences such as extinguishment, surrender, and abandonment. ... Reconciliation is generally inhibited by pleading these defences.

"When considering pleading these defences, counsel must seek approval from the assistant deputy attorney general."

There are various reasons why the court reached the conclusions it did in the Cowichan Tribes case, and one of the six defendants, the City of Richmond, did argue Aboriginal title had been extinguished, which the court rejected.

But one may also wonder what would have happened if the two senior levels of government had in fact stepped up to make similar arguments.

In any case, before anyone gets too critical of the decision, they should understand that the court can only work with the arguments advanced. And when governments choose to self-limit arguments they are otherwise fully entitled to make, they should be extra cautious about criticizing the decision after the fact.

*Robin Junger is a former chief provincial treaty negotiator, former deputy minister of energy and is now a lawyer with McMillan LLP.*