— A Justice Centre Report —



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Whose land is it, anyway?

Aboriginal title, private property, and the need for title certainty in British Columbia

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Abstract

After *Cowichan Tribes v. Canada*, Aboriginal title under section 35 and the title held by a BC homeowner occupy the same mapped lots in southeast Richmond. The Court held that historic Crown grants there unjustifiably infringed Aboriginal title, which it treated as the prior and senior interest. It did not write a sharing rule. Federal recognition agreements now also use the language of Aboriginal title over a territory, though without mapping which lots, if any, are specifically covered. Owners remain on their lots, but lenders and appraisers do not treat the title as certain. The *Cowichan* appeal must settle what the *Constitution* requires. A coexistence statute should say what owners may rely on now, and clarify that if two titles must be reconciled, the Crown – not the landowner – pays.

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Updates to this report

This is Version 1.0 of this report, which may be updated periodically.

About the authors

The primary author of this report is Nigel Hannaford, a veteran journalist and public policy analyst.

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Executive summary

Section 35 of the *Constitution Act, 1982* recognizes and affirms "the existing aboriginal and treaty rights of the aboriginal peoples of Canada."[1]

In July 2017, the federal government stated that treaties and "constructive arrangements" should evolve so that federal law would "realize the unfulfilled constitutional promise of s. 35."[2] The rationale for that 2017 policy is that the Crown treats Aboriginal title as already existing and implements it in slices, enlarging the role that designated Aboriginal groups have in making decisions over land and resources, with consent as the goal rather than title proved in court.[3]

In August 2025, BC Supreme Court Justice Barbara Young held that descendants of the historic Cowichan Band have Aboriginal title to a mapped area in southeast Richmond. Part of this mapped area includes private lots – land that Canadians own. Justice Young also declared that Canada's and Richmond's titles to specified lots in that area are "defective and invalid." In the same judgment, she suspended that second declaration for 18 months so that governments could make arrangements before it took effect.[4]

The case is under appeal.

"Prior and senior" means the Court has already answered whose land it is: Cowichan title comes first. The Court did not invalidate the private owners' titles, and it said any future claims against private owners would be dealt with case by case. What it left unanswered is what their ownership is now worth, and who pays if it is ever lost. The Court held that the BC government has a duty to negotiate in good faith with the Cowichan to reconcile their title with the Crown-granted titles of private owners. Meanwhile, homeowners wait in limbo.

Property-tax expert Paul Sullivan, speaking to the Business Council of British Columbia, said that there have been "no recorded sales in the affected Richmond area since the 7 August 2025 decision."[5] More than one year after the judgment, owners had cut prices without drawing offers, and the local market appeared frozen. Affected real estate has become hard to sell.

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[1] https://laws-lois.justice.gc.ca/eng/const/page-12.html

[2] 'Principled Foundation for Advancing Renewed Relationships with Indigenous Peoples based on the Recognition of Rights,' https://www.justice.gc.ca/eng/csj-sjc/principles-eng.pdf

[3] This approach was laid out by then-Justice Minister and Attorney General of Canada Jody Wilson-Raybould in an April 2018 speech to the BC Business Council.

[4] *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490 (hereinafter "*Cowichan*")

[5] Paul Sullivan, interview, B.C. Business Council, "Uncertain Ground: How the Cowichan Decision Is Reshaping Real Estate Valuation in British Columbia," 8 September 2026, https://static1.squarespace.com/static/65b003ec4edede0a855a88d4/t/6aa06510db31bb1436d98494/1788896528713/Uncertain+Ground+Cowichan+Interview+%281%29.pdf.

Four months after Justice Young's decision, the New Brunswick Court of Appeal faced a similar problem and gave a different answer. The Court refused to declare Aboriginal title over privately owned lots, because the rights a declaration would give could not coexist with the owners' rights to the same land. It did not rule out a finding of title, which can support compensation from the Crown. In May 2026, the Supreme Court of Canada refused to hear an appeal. That ruling stands in New Brunswick, but it does not impact the lower court ruling in *Cowichan*.[6]

The problem of overlapping title is also being created through negotiated agreements between governments and Aboriginal groups. In February 2026, Canada and the Musqueam Indian Band signed a rights-recognition agreement that acknowledges Musqueam rights and "title" within a territory that includes much of Metro Vancouver. However, the map of this large area does not show which particular land parcels are affected.[7]

Title claims of this kind are most common in British Columbia, where most land was never covered by historic treaty.[8]

The 2024 Haida agreement between the Haida Nation and the Province of British Columbia included protection that the Musqueam agreement did not. It says private owners keep their ownership, that ownership stays under British Columbia law, and the recognition of Aboriginal title does not take it away. Where an agreement does not say that, buyers and lenders are left to rely on political assurances.

Private owners were completely excluded from the *Cowichan* litigation and the Musqueam negotiations. If someone has to be paid, or if loans have to be guaranteed, the bill lands on the Crown. That means taxpayers.

When private property is said to be protected, and when questions about the geographic extent or practical effect of title are left for later, an interim rule is needed. Resolving the Richmond lots after *Cowichan*, and making sense of undefined title language after Musqueam, could take years.

The Justice Centre recommends that the BC Court of Appeal not follow Justice Young on privately owned lots. It should instead follow the New Brunswick Court of Appeal. An Aboriginal claim can be accepted only so that the Crown may be ordered to pay

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[6] A New Brunswick appeal court does not bind a British Columbia court. The Supreme Court of Canada refused to hear the New Brunswick case, so that ruling stays the law in New Brunswick only. *J.D. Irving, Limited et al. v. Wolastoqey Nation*, 2025 NBCA 129; leave to appeal refused, *Wolastoqey Nation at Welamukotuk (Oromocto First Nation), et al. v. J.D. Irving Limited, et al.*, 2026 CanLII 50180 (SCC).

[7] šxʷqʷalt̓əlt̓ən – A Rights Recognition Agreement, Musqueam Indian Band and His Majesty the King in Right of Canada, 20 February 2026, https://www.rcaanc-cirnac.gc.ca/eng/1772569109838

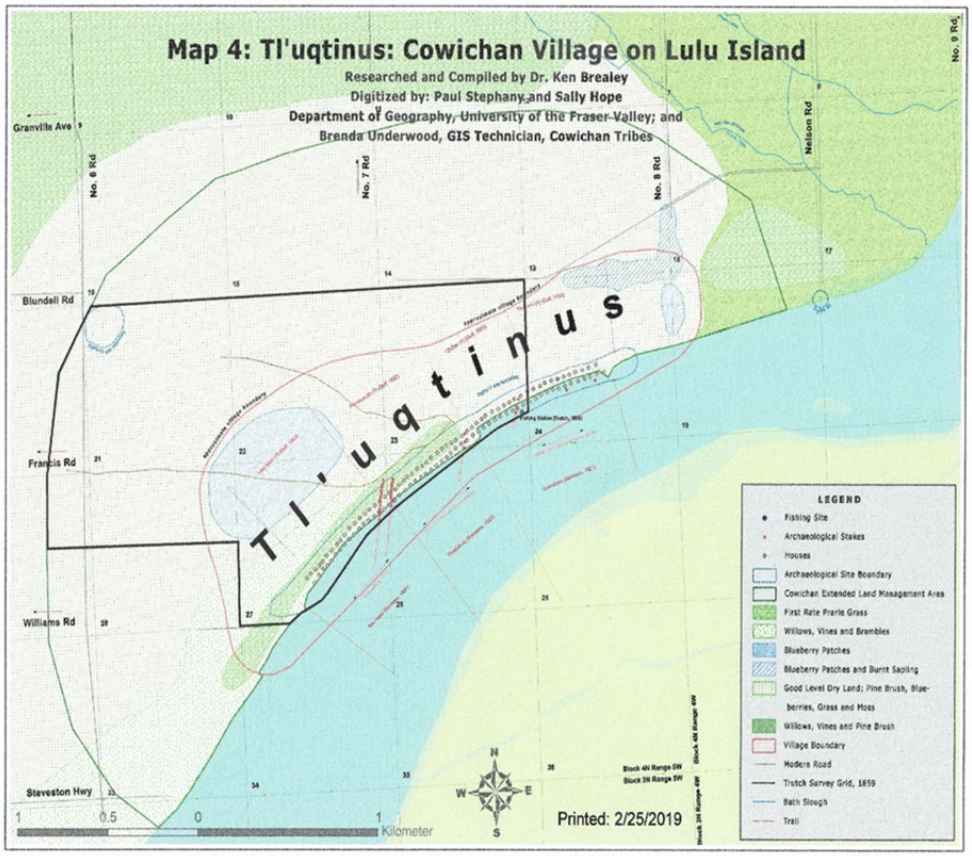
[8] The exceptions are the fourteen Douglas Treaties (1850–54) covering pockets of Vancouver Island in Victoria, Saanich, Sooke, Nanaimo, and Fort Rupert; the northeast of the province, covered since 1899 by Treaty 8; and four modern treaties now in force: Nisga'a, Tsawwassen, Maa-nulth, and Tla'amin.

compensation, but a court should not declare Aboriginal title into existence on land purchased in good faith by homeowners. Until the Court of Appeal decides, British Columbia should pass legislation providing that the *Cowichan* ruling does not let anyone charge the owner rent, or block a sale, and that the provincial government is responsible for paying whatever may be owed. Such legislation should also clarify that if an agreement recognizes Aboriginal title over an area of land, this has no impact on privately owned lots.

The Cowichan court decision

How the case started

In 2014, four bands under the *Indian Act* – Cowichan Tribes, Stz'uminus, Penelakut and Halalt – sued on their own behalf and on behalf of descendants of the historic Cowichan Nation.[9] They said that their summer village, Tl'uqtinus, had been taken from them. They asked for Aboriginal title to the full Lands of Tl'uqtinus – approximately 1,846 acres on the south shore of Lulu Island in what is now southeast Richmond. They also asked for the riverbank land that is now underwater and a right to fish the south arm of the Fraser River for food. The lawsuit was aimed at the Crown and at public titles. Private owners were neither named nor represented in court.



Cowichan First Nation's claimed area (green line) and the court-recognized title area (black line) in southeast Richmond. The black line is the boundary of the land over which the Court declared Aboriginal title, including the private lots inside it.[10]

[9] The action was filed 14 March 2014 (Docket 14-1027). Trial started September 2019.

[10] *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490.

What the Court decided

On August 7, 2025, Justice Young of the BC Supreme Court held that the descendants of the historic Cowichan Nation have Aboriginal title to part of Lulu Island. She also declared an Aboriginal right to fish the south arm of the Fraser River for food.

Justice Young drew a specific boundary on a map and declared Aboriginal title over the land (including private lots) inside that boundary. The declared title area is about 300 to 325 hectares – approximately 40 percent of the 1,846 acres claimed by the Cowichan Nation.

That area includes approximately 150 private lots, farms, a golf course, industrial warehouses, city land, some federal land, and riverbank. Old maps called it a Cowichan village. The city map did not keep the name.

Justice Young said Aboriginal title there is "prior and senior" to ordinary private ownership. She declared Canada's and the City of Richmond's ownership of specified lots "defective and invalid" but did not make a comparable declaration against private owners' titles. She suspended her own declaration (i.e., delayed its implementation) for 18 months so that the Cowichan, Canada, and Richmond could "make the necessary arrangements."[11] Private owners were not ordered off the land.

She held that Aboriginal title and private ownership can coexist on the same land, but she did not resolve how the two will be reconciled in practice. Those questions are left to further negotiation or litigation. She held that British Columbia has a duty to negotiate that reconciliation in good faith with the Cowichan Nation.

The Court's reasons

Justice Young first found that the Cowichan Nation had proven Aboriginal title to the historic village site, the surrounding lands, and a strip of submerged lands along the Fraser River shoreline. Under the test set by earlier Supreme Court cases,[12] the Cowichan Nation had to show that they occupied the land at the time the Crown claimed sovereignty in 1846, that there was enough continuity between that earlier occupation and later use, and that at the time of sovereignty they had exclusive control of the land. She found the historical evidence met those requirements for the village site and the adjacent strip along the Fraser River shoreline.

She then explained why neither the historic Crown grants nor the *Land Title Act* stood in the way of declaring Aboriginal title.

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[11] *Cowichan*, supra note 4, at para. 3638.

[12] *Delgamuukw v. British Columbia, [1997]* 3 SCR 1010; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44.

First, she held that the BC government had no constitutional authority, after Confederation, to give away these "Indian settlement" lands before the Cowichan interest had been dealt with.[13] The original grants were therefore an unjustified infringement of Aboriginal title.

Second, she held that the legislation[14] that normally protects a registered owner did not give Canada or Richmond a defence to the Aboriginal title claim, because the Constitution of Canada, including section 35 of the *Constitution Act, 1982*, is the supreme law of Canada.

Justice Young also referred[15] to a BC provision, section 8.1 of the *Interpretation Act*, added after the province passed the *Declaration on the Rights of Indigenous Peoples Act (DRIPA)* in 2019, that tells judges to read provincial laws, wherever possible, so they line up with the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. *UNDRIP* states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."[16] Justice Young treated section 8.1 as extra support for her conclusion that the *Land Title Act*'s protections do not defeat Aboriginal title.

The effect on private property owners and taxpayers

The ultimate practical consequences of the *Cowichan* ruling remain unresolved, and clarity may take years.

Homeowners in the designated area inside Richmond still hold title to, and live in, their homes. It is not yet clear whether these homeowners and other private property owners will retain all their property rights, or whether BC taxpayers will fund a Crown payment (or payments) to the Cowichan.

Private owners can still sell, mortgage, and insure their property. But what they lost is the certainty that those transactions once rested upon. A prospective buyer can no longer treat a homeowner's land-title record as a complete answer to the question: whose land is this?

In October 2025, the City of Richmond wrote to approximately 150 owners inside the mapped area. For many, that letter was the first notice that their title was in question. The letter, signed by Mayor Malcolm Brodie, did not soften the news: "the Court has declared Aboriginal title to your property which may compromise the status and validity of your

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[13] Article 13 of the *British Columbia Terms of Union (1871)* made the Dominion responsible for "Indians, and lands reserved for the Indians." Justice Young held that this constrained British Columbia's power, after Confederation, to dispose of the Cowichan "Indian settlement" lands before that interest was dealt with.
[14] *Land Title Act*, R.S.B.C. 1996, c. 250, sections 23 and 25.
[15] *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490 at paras. 2257–2258.
[16] *United Nations Declaration on the Rights of Indigenous Peoples*, Article 26.

ownership – this was mandated without any prior notice to the landowners."[17] In other words, owners who had bought their land in good faith learned from their city, not from the court or the province, that a lawsuit they were never part of had put their title in doubt, and nobody has yet told them who will pay if that title fails.

More than one year since the BC Supreme Court decision, the local housing market appears to be frozen. Property-tax expert Paul Sullivan, speaking to the Business Council of British Columbia, said that there have been "no recorded sales in the affected Richmond area since the 7 August 2025 decision."[18] Owners have reportedly cut asking prices without receiving offers. Sullivan noted that the absence of sales makes appraisal difficult.[19] Some appraisers have also said that public perception after *Cowichan* could reduce values in the affected area by as much as 30 to 40 percent until the uncertainty lifts.[20]

As for commercial properties in the area, Sullivan's team estimates that these "could currently be worth 30 to 60 cents on the dollar, a 40 to 70 percent valuation loss relative to pre-August 2025." Montrose Properties, a major private owner in the industrial area, said a bank refused to lend it $35 million after the ruling.[21]

Former BC Premier David Eby, who insisted the government will not allow Aboriginal title to extinguish private property, spoke of loan guarantees of up to $150 million to help affected owners borrow when banks refuse to lend.[22]

The effects of the ruling have even shown up on land in Richmond that sits outside the mapped area where Justice Young declared Aboriginal title. After the ruling, an Ontario buyer withdrew a multi-million-dollar offer for the Versante Hotel, citing uncertainty about land title in Richmond.[23] The hotel later sold to a Hong Kong buyer for $51.5 million, at a lower price than the withdrawn bid, and far below the original asking price of $98 million.

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[17] Malcolm Brodie, Mayor of Richmond, letter to property owners in southeast Richmond (October 2025), as quoted in Kenneth Chan, "Richmond mayor warns property owners their titles are at risk after Aboriginal title ruling," Daily Hive | Urbanized, 20 October 2025, https://dailyhive.com/vancouver/richmond-mayor-malcolm-brodie-cowichan-tribes-aboriginal-title-risk.

[18] Paul Sullivan, interview, B.C. Business Council, "Uncertain Ground: How the Cowichan Decision Is Reshaping Real Estate Valuation in British Columbia," 8 September 2026, https://static1.squarespace.com/static/65b003ec4ededе0a855a88d4/t/6aa06510db31bb1436d98494/1788896528713/Uncertain+Ground+Cowichan+Interview+%281%29.pdf

[19] Amy Judd and Jordan Armstrong, "Is the Cowichan land title ruling affecting property appraisals?" Global News.

[20] Alec Lazenby, "Appraisers say land claim in Richmond could be reducing property values as much as 30 to 40 per cent," Vancouver Sun, 12 March 2026.

[21] Arno Kopecky, "A judge recognized aboriginal title on private property. Panic ensued," Maclean's, 13 July 2026.

[22] Wolfgang Depner, "Eby plans $150 million in loan guarantees for Cowichan landowners," CityNews, 12 December 2025.

[23] Nono Shen and Darryl Greer, "Cowichan case blamed for sinking B.C. property deals, including luxury hotel purchase," The Canadian Press, 11 December 2025.

Meanwhile, approximately 80 percent of BC's land base is covered by active Aboriginal land claims, while treaties that have already settled ownership cover only five to six percent.[24] Some 25 First Nations in Metro Vancouver, the Fraser Valley, Howe Sound and the Sunshine Coast have also filed Aboriginal title claims.[25] Those claims were not written as actions to take private lots, but the Cowichan plaintiffs did not have to name the homeowners to establish title over the same privately owned lands.

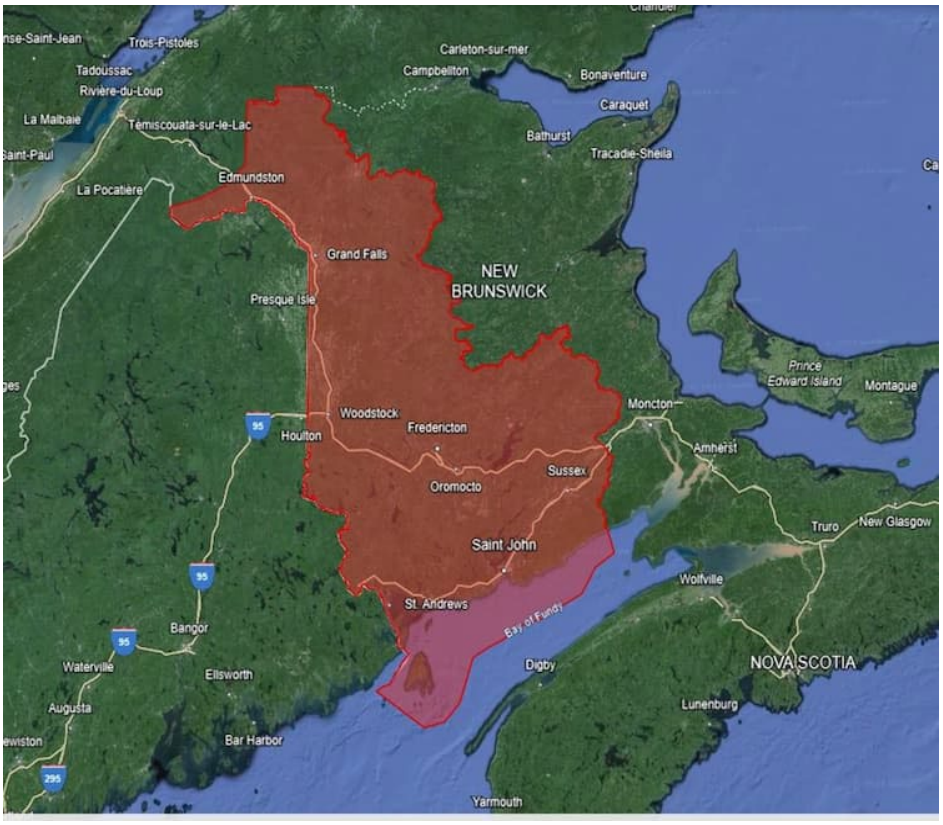
Cowichan is now the example others can copy. A later claimant can ask a court to do the same: prove historic occupation, obtain a section 35 declaration, leave ordinary ownership on the land-title record, and hand the Crown the job of reconciling the two. Whether appeal courts allow that example to stand is the live question. Until they answer it, *Cowichan* is both a local problem and a precedent others will try to use.

A different answer in New Brunswick

Four months after Justice Young's decision, the New Brunswick Court of Appeal faced a similar problem and gave a different answer, in *J.D. Irving, Limited v. Wolastoqey Nation*.

In that case, the Wolastoqey Nation claimed Aboriginal title over the entire western and southern half of New Brunswick.[26] The appeal did not decide whether title exists. It addressed whether the Wolastoqey could seek a declaration of Aboriginal title over privately held lands where the owners were not parties to the litigation.

[24] Melanie Bennet, "Nearly 80% of B.C. locked in active Aboriginal land grab battles," Juno News, 15 April 2026, https://www.junonews.com/p/nearly-80-of-bc-locked-in-active.
[25] Gordon Hoekstra, "Despite progress, B.C. First Nations hold less than 1 per cent of traditional territories," Vancouver Sun, 11 May 2026, https://vancouversun.com/feature/return-bc-first-nations-territory-despite-recent-gains-less-than-1-per-cent-in-their-hands.
[26] *J.D. Irving, Limited et al. v. Wolastoqey Nation*, 2025 NBCA 129.



Wolastoqey Nation Aboriginal title claim map over land in New Brunswick. This is a claim map showing the area over which the Nation asserts title. It is not a court-declared title boundary. The New Brunswick Court of Appeal refused a declaration of Aboriginal title over private lots inside the claim area. [27]

The New Brunswick Court of Appeal held that a declaration of Aboriginal title cannot coexist with private ownership of the same land. A declaration of Aboriginal title confers the right to exclusive use of the land. That right conflicts with the exclusive rights of a private owner, so the Court refused to declare present-day ownership rights to the Aboriginal claimants. Justice Drapeau wrote that such a declaration over private land would "sound the death knell of reconciliation with the interests of non-Aboriginal Canadians."[28]

[27] Government of New Brunswick, "Additional and overlapping claims," archived 3 October 2024, https://web.archive.org/web/20241003194917/https://www2.gnb.ca/content/gnb/en/corporate/promo/wolastoqey-aboriginal-title-claim/additional-and-overlapping-claims.html.
[28] *J.D. Irving*, supra note 26, at para. 192.

Justice Drapeau allowed the Wolastoqey Nation to seek, over the private lands, only a finding of Aboriginal title, not a declaration.[29] That finding can support a claim for compensation from the Crown.[30]

On May 28, 2026, the Supreme Court of Canada refused to hear an appeal of that decision.[31] The New Brunswick Court of Appeal decision therefore stands in New Brunswick.

It does not, however, decide *Cowichan*. *Cowichan* is a British Columbia case, and its appeal will be heard by the BC Court of Appeal. That court can follow the New Brunswick ruling, but it does not have to.

A spokesperson for Rebecca Alty, the federal Minister of Crown-Indigenous Relations, said the New Brunswick decision "will inform arguments in other cases, such as the *Cowichan* case in British Columbia" when the case comes before the BC Court of Appeal.[32]

Until the Supreme Court of Canada brings legal clarity on this issue, however, the country has two working answers for declarations of Aboriginal title on private land. Justice Young's approach lets Aboriginal title and private ownership coexist on the same lots and leaves their reconciliation to later negotiation or litigation. The New Brunswick approach refuses a declaration of Aboriginal title over private lots but allows a finding of title to support compensation from the Crown.

Recognition agreements of Aboriginal title

Private property owners are not only affected when courts declare Aboriginal title. They are also affected when governments use the language of Aboriginal title in agreements with Aboriginal groups without clarifying specifically which privately owned lots might be included, or not, in a given area of land.

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[29] *J.D. Irving*, supra note 26, at para. 7.
[30] The underlying claim is still alive and can proceed to trial.
[31] "Supreme Court of Canada Denies Leave in Wolastoqey Nation's Aboriginal Title Claim" (10 June 2026), Cassels, https://cassels.com/insights/supreme-court-of-canada-denies-leave-in-wolastoqey-nations-aboriginal-title-claim/
[32] Statement by a spokesperson for Rebecca Alty, Minister of Crown-Indigenous Relations, to The Canadian Press, 28 May 2026, as reported in "Supreme Court won't hear case from Wolastoqey Nation on Aboriginal title," APTN News, 28 May 2026, https://www.aptnnews.ca/national-news/supreme-court-wont-hear-case-from-wolastoqey-nation-on-aboriginal-title/.

Musqueam

The Musqueam are an Aboriginal group with long-standing roots in the lower Fraser River and Burrard Inlet area – the region that is now much of Metro Vancouver. Federal negotiations with the band over this region have been underway since 2016.

In February 2026, the federal government and the Musqueam Indian Band signed an agreement in secret, without any input from homeowners, that acknowledges Musqueam rights and title "within Musqueam Territory."[33,34] The agreement itself says it does not create or establish Musqueam's rights and title. The territory in question includes land that is home to nearly two million people, many of whom bought believing they were acquiring secure title. This agreement notes that the government must "incrementally implement rights and title." In practice, this lets Canada and the Musqueam act on specific matters through separate agreements without first settling where title applies.

[33] It also that day signed two other agreements covering fisheries and marine stewardship that are beyond the scope of this paper.

[34] šxʷqʷalƛ̓əlƛ̓ən – A Rights Recognition Agreement, Musqueam Indian Band and His Majesty the King in Right of Canada, 20 February 2026, https://www.rcaanc-cirnac.gc.ca/eng/1772569109838.



Musqueam Statement of Intent boundary[35] *(red line), based on the 1976 Musqueam Declaration and repeated in the February 2026 agreement's definition of "Musqueam Territory." This is a territory boundary, not a title boundary. The agreement does not declare Aboriginal title over the private lots within the red line and does not adopt this map as a map of title.*

The territory described in these new Musqueam agreements covers much of Metro Vancouver, including Vancouver, Richmond, Burnaby, parts of the North Shore and Delta, and surrounding areas. This area is home to nearly two million people.[36] Buyers and

[35] Kenneth Chan, "Federal agreement recognizes Musqueam's Aboriginal title in Metro Vancouver," Daily Hive | Urbanized, 28 February 2026, https://dailyhive.com/vancouver/musqueam-indian-band-agreement-government-of-canada-aboriginal-rights.

[36] Kenneth Chan, "Federal agreement recognizes Musqueam's Aboriginal title in Metro Vancouver," Daily Hive | Urbanized, 28 February 2026, https://dailyhive.com/vancouver/musqueam-indian-band-agreement-government-of-canada-aboriginal-rights. See also "What the Musqueam rights recognition agreement means

lenders cannot tell from the agreement itself whether any given private lot is inside or outside a future claim or side agreement. Unlike *Cowichan*, there is no court-drawn map and no list of affected land parcels. The uncertainty is therefore wider than the uncertainty created by the *Cowichan* court ruling.

Assurance that private property remains untouched came only from later ministerial statements and a Musqueam community message. Federal Minister of Crown-Indigenous Relations Rebecca Alty stated, "The recently signed Musqueam agreements do not affect private property. Suggestions otherwise are false."[37] But these assurances from Minister Alty and the Musqueam are considerably weaker than the actual agreement. Political assurances, after all, are not legally binding.[38]

The practical result so far is uncertainty across a much larger area, because the agreement recognizes title without naming parcels or expressly excluding private land, with the hardest questions left for later negotiations or litigation. When an agreement does not exclude private lots, the market reaction is the same kind of caution already seen in Richmond. Lenders and appraisers treat the register as incomplete until the question of title overlap is settled.[39] Musqueam and federal government statements that private property is untouched are not as compelling as the explicit clause in the Haida "Rising Tide" agreement, which we review below.

Haida Gwaii

The 2024 Haida "Rising Tide" agreement and the supporting statutes recognize Aboriginal title to Haida Gwaii, formerly the Queen Charlotte Islands, an archipelago of two main islands and many smaller ones, roughly 250 km north of Vancouver Island. This agreement includes a private-lot protection that the Musqueam agreement does not. It provides that Haida Gwaii will honour existing private ownership interests, and that Aboriginal title recognition "does not alter or derogate from" them.[40]

Granted, Haida Gwaii is a remote group of islands in the north Pacific with a small permanent population and far fewer private lots than the dense urban area covered by the Musqueam agreement, so the practical stakes are different. Nonetheless, British Columbia describes this as the first agreement in Canada to recognize Aboriginal title

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and what it doesn't," CBC News, 14 March 2026, https://www.cbc.ca/news/canada/british-columbia/musqueam-rights-recognition-agreement-explained-9.7128504.

[37] Rebecca Alty (@RebeccaAltyNWT), "Statement from Minister Alty," X post, 3 March 2026, https://x.com/RebeccaAltyNWT/status/2028657219500163478.

[38] *Canadian Taxpayers Federation v. Ontario (Minister of Finance)*, 2004 CanLII 48177 (ON SC) at para 70

[39] Dwight Newman, "Government's Musqueam deal doesn't protect private property in Vancouver," National Post, 15 March 2026, https://nationalpost.com/opinion/dwight-newman-governments-musqueam-deal-doesnt-protect-private-property-in-vancouver.

[40] *Gaayhllxid / Gíihlagalgang "Rising Tide" Haida Title Lands Agreement*. Agreement between the Haida Nation and the Province of British Columbia (14 April 2024).

through negotiation rather than a court ruling.[41] In 2024, British Columbia also passed a law that confirms the Haida agreement and the protection for existing private ownership on Haida Gwaii.[42] The protection is a written promise in the agreement and the statute, not a change to the Constitution.

When they choose to, governments know how to protect private landowners on paper.

Recommendations

Canada's federal and provincial governments are required by section 35 of the *Constitution Act, 1982*, to recognize and affirm existing aboriginal and treaty rights. In practice, this means abiding by the rulings of the Supreme Court of Canada and other courts.

The Justice Centre recommends that the BC Court of Appeal overturn Justice Young's decision in *Cowichan* and instead follow the New Brunswick Court of Appeal ruling in *Wolastoqey Nation*, in regard to declaring Aboriginal title over privately owned lots. No court should declare that an Aboriginal group has present-day ownership rights over privately owned lots purchased by individuals who very reasonably believed that they were acquiring title. A declaration of Aboriginal title should not be granted over privately owned land because coexistence undermines both exclusive possession and confidence in markets, and is manifestly unfair to those who purchased property in good faith.

Private owners should be given the opportunity to participate in any claim that includes their lots. In *Cowichan,* private owners were not named as parties.

The federal government is already a party to the *Cowichan* appeal. It should ask the BC Court of Appeal not to uphold a declaration of Aboriginal title over privately owned lots.

Until the Court of Appeal decides on *Cowichan*, the BC government should pass legislation immediately to address uncertainties created by the *Cowichan* court ruling, the Musqueam agreement, and any future agreement like them. Such law could be amended or even repealed when the BC Court of Appeal renders its decision in Cowichan. Such law should clarify what ordinary private ownership on the Richmond lots still means while the appeal is underway, and that a recognition agreement without a published lot map has no effect on private property. If a court later orders payment, the Crown – not the homeowner – should pay.

British Columbia should repeal *DRIPA* and section 8.1 of the *Interpretation Act*. Together, they require judges to read ordinary BC statutes, wherever possible, consistently with the

[41] Government of British Columbia, "Haida Nation, B.C. recognize Haida Aboriginal title, a historic first in Canada," news release, 14 April 2024, https://news.gov.bc.ca/releases/2024PREM0020-000560
[42] *Haida Nation Recognition Amendment Act, 2024*, S.B.C. 2024, c. 21.

United Nations Declaration on the Rights of Indigenous Peoples (*UNDRIP*). Repealing them will not remove section 35 of the *Constitution Act, 1982*, or reverse the division-of-powers Supreme Court holding in *Delgamuukw*, but it will move BC away from race-based policies and the use of race when interpreting provincial laws.

More broadly, Canada should not sign another Aboriginal agreement that uses the word "title" unless it says which lots are covered and explicitly protects private ownership.

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