

CANADA / JUDGMENT

## Giesbrecht v. British Columbia (Attorney General)

2020 BCSC 174

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 174 Giesbrecht v. British Columbia (Attorney General)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Giesbrecht v. British Columbia (Attorney General),

2020 BCSC 174

Date: 20200212

Docket: S161339

Registry: Vancouver

Between:

Chief Ronald Giesbrecht on his own behalf and on behalf  
of all members of the Kwikwetlem First Nation

Plaintiff

And:

Her Majesty the Queen in Right of British Columbia,

The Greater Vancouver Regional District, The British Columbia Housing Management  
Corporation, The Corporation of the City of Port Coquitlam,

The Minister of Forests, Lands and Natural Resource Operations and the Provincial Rental  
Housing Corporation

Defendants

Before: The Honourable Mr. Justice G.C. Weatherill

## Reasons for Judgment

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### Place and Dates of Hearing:

Vancouver, B.C.

January 29 and 30, 2020

### Place and Date of Judgment:

Vancouver, B.C.

February 12, 2020

## Introduction

- [1] This is a land claim action in which the plaintiff Kwikwetlem First Nation ("KFN") seeks declarations of Aboriginal title as well as other relief in respect of certain lands in Port Coquitlam, British Columbia.
- [2] The defendant, Her Majesty the Queen in Right of British Columbia ("Province") applies to add the Attorney General of Canada as a defendant. The defendant, City of Port Coquitlam ("City") consents to the application.

- [3] Each of KFN and the Attorney General of Canada ("Canada") opposes the application. The defendants, Metro Vancouver Regional District ("MRVD") and British Columbia Housing Management Commission and Provincial Rental Housing Corporation ("BC Housing") take no position.
- [4] The application engages how the law of joinder applies in the context of modern Aboriginal rights litigation.

## Background

- [5] KFN is a small Aboriginal nation of approximately 100 members. Its traditional territory is within what is known as the Coquitlam Watershed.
- [6] KFN does not seek Aboriginal title over the whole of its traditional territory. Rather it seeks title only over certain lands surrounding its main reserve defined as the "Riverview Lands", "Colony Farm", the "Port Coquitlam Lands" and the "Provincial Crown Lands" (collectively the "Claim Area"). Title to the various parcels of land comprising the Claim Area is held almost exclusively in fee simple by one of the defendants. Each defendant is a public body.
- [7] The origin of legal title to most of the parcels of land within the Claim Area was granted by the Colony of British Columbia prior to its entry into Confederation. Title to the remaining parcels of land within the Claim Area was transferred by the Province to Canada for the purposes of constructing the trans-continental railway ("Railway Belt Parcels"). After various transactions over the years, all of the parcels of land in issue were ultimately acquired by one or more of the current defendant owners. The details of the various historical transfers and fee simple acquisitions are not pertinent to the present application.
- [8] On September 21, 1992, the Province, Canada and the First Nations Summit signed an Agreement which outlined the process by which treaties would be negotiated in British Columbia among the Province, Canada and willing First Nations, or groups of First Nations. The Agreement resulted in the creation of the British Columbia Treaty Commission ("BCTC") whose mandate is to facilitate the treaty-making process. The terms and conditions of the Agreement were confirmed in legislation in 1993 by Canada (the "British Columbia Treaty Commission Act") and by British Columbia (the "Treaty Commission Act") and by Resolution 1.2 of the First Nation's Summit on May 10, 1993.
- [9] The modern treaty process in British Columbia consists of six steps, the first two of which are (1) the First Nation submits to the BCTC a statement of intent to negotiate and (2) the BCTC convenes a meeting of the Province, Canada and the First Nation which allows the BCTC to assess the readiness of the parties to negotiate.
- [10] KFN pleads that it sought to enter into modern day treaty negotiations with the Crown under the auspices of the BCTC but the Province refused to enter into negotiations. The Province denies the allegation that it refused to negotiate. Rather, it says that, on December 19, 2000, representatives of the Province and Canada wrote to the KFN expressing concerns about

negotiating a treaty with KFN given its small size and offered to meet with the KFN and assist in determining a possible approach. The BCTC convened an initial meeting of the parties on December 21, 2000 but the KFN did not attend and, as a result, no negotiations have taken place.

[11] In addition to its claim of Aboriginal Title to the Claim Area, KFN seeks:

- a) a declaration that management of the Riverview Lands, the creation of parks, the operation and management of Colony Farm Forensic Psychiatric Institute, a Wildlife Management Area and other portions of the Claim Area unjustifiably infringe KFN's Aboriginal title;
- b) a declaration that any grant, patent or certificate of indefeasible title held in respect of the Claim Area be cancelled or transferred to KFN;
- c) an order that the defendants account for any benefit they have received flowing from or as a result of KFN's Aboriginal title to the Claim Area and disgorge any such benefit;
- d) damages, including equitable damages, arising from the unjustifiable infringement of KFN's Aboriginal title;
- e) an order that the Province consult with the KFN with respect to the creation of effective means to:
  - i. allow a First Nation to record and register lands held pursuant to Aboriginal title;
  - ii. allow a First Nation to record and register interests in lands granted by or created by the First Nation in lands held pursuant to Aboriginal title;
  - iii. allow the First Nation a means to implement decisions it makes in respect of the use of lands held pursuant to Aboriginal title;
  - iv. allow the First Nation a means of enjoying the economic benefits conferred by Aboriginal title; (collectively the "Land and Resources Management Protocols")
- f) an order that the KFN have liberty to apply if the parties are unable to agree on the Land and Resources Management Protocols within one year; and
- g) a declaration that the Province has breached KFN's rights under s. 15 of the Canadian Charter of Rights and Freedoms and the honour of the Crown by failing to establish Land and Resources Management Protocols that provide effective administrative means to recognize, protect and adjudicate the existence, scope and extent of Aboriginal title and provide compensation for government decisions that injuriously affect or appropriate Aboriginal title.

[12] In support of its claims in respect of the Land and Resources Management Protocols, KFN pleads the existence of a stark disparity between the rights and resources afforded to fee simple owners of land (through a statutory land title registry scheme and corresponding protections) and those available to holders of Aboriginal title. KFN pleads that the exclusion

of Aboriginal title from the land title statutory regime and other common law rights has resulted in the reinforcement of the historical stereotype that Aboriginal peoples did not have land rights worthy of protection and that Aboriginal title is less worthy of effective protection, with the effect that Aboriginal peoples have been demeaned and their rights vulnerable to being lost or eroded without compensation or accommodation.

- [13] KFN submits that Canada is not a necessary party to any part of its claim in this proceeding, not to the need to prove Aboriginal title, nor to its claim in respect of Land and Resources Management Protocols. During her submissions, counsel for the KFN made it clear that KFN is not contesting the validity of the original colonial and Crown grants that created the fee simple interests presently in existence in respect of the Claim Area. Rather, KFN claims that the defendants' actions as fee simple owners have infringed and continue to infringe their pre-existing Aboriginal title to the Claim Area, in that they are using and exploiting the lands to the exclusion and disadvantage of the KFN, such that KFN's Aboriginal title is virtually meaningless.
- [14] KFN contends that, if the court grants the declaration of Aboriginal title that is sought, the appropriate remedy for the unjustified infringement would be the cancellation of the fee simple titles currently held by the defendant public bodies, or their transfer to the KFN, and the establishment of the Land and Resources Management Protocols. This, KFN argues, would be in keeping with the principles of reconciliation. KFN submits that each of the claims and remedies sought is wholly within the jurisdiction of the Province and that Canada is an unnecessary party to the litigation.
- [15] In its response to civil claim, the MRVD pleads that Parliament extinguished Aboriginal title in respect of the Claimed Area with the clear and plain intention to do so and, to the extent that Aboriginal title ever existed in respect of the Claimed Area, it has been displaced by the fee simple title or similar interest granted in respect of such lands. They say these grants were lawful and remain valid.
- [16] Despite KFN taking no issue with the validity of the original grants, MVRD pleads, without more, that:
34. The Federal Crown and the Provincial Crown are necessary and indispensable parties to this litigation to the extent that the plaintiffs assert claims of Aboriginal title and are essential for the effective adjudication of such claims. Although the Provincial Crown has been named as a defendant, the Federal Crown is a necessary party that has not been named.

[Emphasis added]

- [17] In its response to civil claim, the Province pleads, inter alia, that the issues to be decided in this case include:
- a) the impact of colonial, federal and provincial Crown grants of lands in fee simple; and
  - b) the effect of colonial and federal grants of lands which were within the Railway Belt.

[18] The issue to be decided is whether, in the face of these pleadings, given that the claims being made by KFN do not involve their reserves, as well as KFN's confirmation that it takes no issue with the validity of the original Colonial or Crown grants of land, Canada should be added as a defendant to the action.

#### The Law

[19] The addition of a party to an action is governed by R. 6-2(7) of the Supreme Court Civil Rules. That rule provides, in relevant part:

#### Adding, removing or substituting parties by order

(7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),

(a) ,

(b) order that a person be added or substituted as a party if

(i) that person ought to have been joined as a party, or

(ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and

(c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with

(i) any relief claimed in the proceeding, or

(ii) the subject matter of the proceeding

that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

[20] Rule 6-2(7)(b) is concerned with remedying defects in the proceedings. It has narrow application. The court is required to decide if the person ought to have been joined as a party or the person's participation in the proceeding is necessary to ensure that all matters may be effectively adjudicated. If neither of these prerequisites is established, the application must be refused. Rule 6-2(7)(c) requires a finding that joinder of the proposed party is just and convenient in the particular case. The decision to add a party is discretionary: *Alexis v. Duncan*, 2015 BCCA 135 at paras. 15 and 17.

[21] In *Thomas v. Rio Tinto Alcan Inc.*, 2016 BCSC 1474 [*Rio Tinto Alcan*], another case concerning Aboriginal rights and title, this court recently summarized the principles governing the addition of a party to an action (at paras. 14-15):

a) a party should be added where that party's participation is necessary for the proper determination of the case;

- b) the discretion to add parties should be generously exercised so as to enable effective adjudication upon all matters;
- c) in exercising the discretion to add a party, the court should not concern itself as to whether the action will be successful other than to be satisfied that there may exist an issue or question between the applicant and the party being joined;
- d) evidence is not required in support of a joinder application. The pleadings may be sufficient to establish that there is a question to be tried between the parties;
- e) where an applicant relies on pleadings alone, the facts alleged, which if assumed to be true, must disclose a cause of action;
- f) unless there is prejudice, amendments should be granted liberally to enable the issues to be tried;
- g) use of the word "ought" (in subrule (b)(i)) encompasses all those cases in which joining the person is a necessity and may even be broader to include situations in which joining the person may be more than mere convenience but less than a necessity;
- h) in order to have a right of appeal under the Court of Appeal Act, an appellant must have been a party to the underlying lawsuit and a right to pursue such an appeal is an important component to the effectual adjudication of the issues in question, particularly so where one or the other parties to the litigation may not wish to pursue appeal; and
- i) the prime consideration in determining whether a person should be a party to the litigation is the interests of justice, a consideration that is triggered when the party proposed to be added has significant interests or legal agreements that may be directly affected by the matters litigated in the action.

[22] In *Byrd v. Cariboo (Regional District)*, 2016 BCCA 69, the court confirmed that the phrase "ought to have been joined" in Rule 6-2(7)(b)(i) addresses the situation where the person sought to be added has a direct interest in the outcome of the existing action. The court further clarified that the phrase "necessary to ensure that all matters .may be effectually adjudicated on" in Rule 6-2(7)(b)(ii) addresses the situation where the participation of the person sought to be added is required for the existing claim to be fully and properly adjudicated (at para. 36).

[23] In *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329, the court stated at paragraph 45 that, with respect to Rule 6-2(7)(c), the threshold is low and the court need only be satisfied that there is a real issue between the parties that is not frivolous or that the applicant has a possible cause of action against the proposed party.

[24] There have been several cases in this province involving an application to add the Crown as a party in the context of Aboriginal title litigation.

- [25] First, in *Chief Joe Hall v. Canada Lands Company Limited*, 2011 BCSC 1031, the plaintiff alleged that the lands at issue were part of reserves created for them in 1864 and that the province wrongfully removed them from their reserves and transferred them to Canada. The lands had been the subject of negotiations and litigation between Canada and the plaintiffs for many years. In that context, this court held that both the federal and the provincial Crown were necessary parties:
- [20] The obvious deficiency is the absence of both the federal Crown and the Province of British Columbia as parties to these proceedings. To the extent that claims against the applicants are based on [A]boriginal title and a reserve interest, those claims cannot be pursued in this proceeding without those additional parties.
- [33] In contrast, the plaintiffs are now seeking remedies based on the existence of substantive [A]boriginal rights - title or reserve interests in the Lands - which they will attempt to prove in this action.
- [39] each case will depend on the facts alleged and the claims advanced. However, in the circumstances of this case, I agree with the applicants' submission that the pleadings as they stand are deficient because of the absence of those parties. It appears to me that both the federal and provincial Crown will be necessary parties. The plaintiffs say they will attempt to prove two claims: a treaty right and [A]boriginal title to the Lands. I fail to see how they can do either in the absence of the parties against whom those allegations are directed.
- [Emphasis added]
- [26] In *Rio Tinto Alcan*, this court stated, at para. 21:
21. Third, the fact that no formal declaration of aboriginal title is sought by the plaintiffs in this case is not determinative of whether the federal and provincial Crown are appropriately made parties. The plaintiffs have expressly alleged and will be required to establish on the evidence that they have [A]boriginal title and [A]boriginal rights to the land and waters affected by the operation of the Kenney Dam. This Court has expressly held in *Chief Joe Hall v. Canada Lands Company Limited*, 2011 BCSC 1031, that even though an express declaration of [A]boriginal title is not sought in the pleadings, both the federal and provincial Crown are necessary parties to the determination of issues respecting aboriginal title. [Emphasis added]
- [27] In *Rio Tinto Alcan*, both the federal and provincial Crowns consented to be added as parties. Only the plaintiff First Nation was opposed. I do not take *Rio Tinto Alcan* as having displaced the requirements of R. 6-2(7) such that the mere existence of a claim for Aboriginal title requires both the federal and provincial Crowns to be parties to it. As stated by this court in *Chief Joe Hall*, each case will depend on its facts and the claims advanced (at para. 39).

## Analysis

- [28] The Province submits that KFN's claim challenges the validity of the colonial, Dominion, federal and provincial land grants that were historically made in respect of the Claim Area and raises novel issues of profound significance to all Canadians. It argues that the involvement of Canada is necessary for the effective adjudication of the issues raised in the pleadings because:
- a) there is no settled law regarding the impact of Aboriginal title on a grant of fee simple title and, in particular, the extent to which a grant of fee simple title extinguishes, displaces and/or infringes upon Aboriginal rights, title and interest. Given that Canada was the source of the grants of the fee simple interests in question, and hence the party ultimately responsible for any infringement of KFN's Aboriginal title, its participation as a party is necessary to ensure the effective and efficient adjudication of that issue;
  - b) the Land and Resources Management Protocols sought by the KFN against the Province are beyond the BCTC's negotiation processes and would amount to a fundamental alteration of how land claims are determined in British Columbia, thereby raising an issue as to whether the Province has jurisdiction to act unilaterally in implementing them and creating rights protected under s. 35 of the Constitution Act, 1982;
  - c) the KFN has pled historical failures to recognize and protect the rights of Aboriginal people, including their status as created by the Indian Act which necessarily engages Canada's jurisdiction; and
  - d) without Canada's participation in the litigation, there may be doubt as to whether Canada will be bound by a declaration of Aboriginal title.
- [29] The Province submits that there has never been a case in British Columbia involving a claim to Aboriginal title in which Canada was not either a party or made a party.
- [30] The significance of the issue of whether Aboriginal title and existing fee simple title can co-exist in the same lands was foreshadowed 20 years ago by Madam Justice Southin in *Skeetchestn Indian Band and Secwepemc Aboriginal Nation v. Registrar of Land Titles*, Kamloops 2000 BCCA 525 at paras. 5-6:
- [5] Sooner or later, the question of whether those who hold certificates of indefeasible title, whether to ranch lands on Kamloops Lake or to a small lot with a house on it on Railway Avenue in the Village of Ashcroft or an office tower on Georgia Street in the City of Vancouver, are subject to claims of [A]boriginal right must be decided.
- [6] If the inhabitants of British Columbia, be they rich or poor, of whatever stock of descent - I would be surprised if there are not persons of [A]boriginal descent in British Columbia who hold land in fee simple - cannot rest on their certificates of indefeasible title, they, their mortgagees, and, perhaps more importantly, their families who are dependent upon them for their economic well-being, should know, and the sooner the better.

- [31] This issue is currently before this court in at least four other proceedings. Canada is a party in each of them: *The Council of the Haida Nation v. British Columbia* (Vancouver Registry No. L020662); *Cowichan Tribes v. Canada* (Attorney General) (Victoria Registry No. 14-1027; *Ignace v. British Columbia* (Attorney General) (Kamloops Registry No. S51952); *Nuchatlaht v. British Columbia* (Vancouver Registry No. S170606). However, in each case, the plaintiff is claiming specific relief directly against Canada
- [32] There have been claims that originated in this Court involving Aboriginal land claims where Canada was not a defendant, including *Calder et al. v. Attorney General of British Columbia*, [1973] SCR 313; *Haida Nation v. British Columbia* (Minister of Forests), 2004 SCC 73 and *Yahey v. British Columbia* 2019 BCSC 1725.
- [33] Other cases in which Canada was added as a defendant directly implicated federal jurisdiction, such as fisheries (*Delgamuukw v. British Columbia* [1986] B.C.J. No. 2396 (BCSC)) and special reserves (*Kamloops Indian Band v. Harper Ranch Ltd.*, [1990] B.C.J. No. 1121 (BCSC)). Each of these cases was decided before *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 [*Tsilhqot'in Nation*], which is the most recent decision of the Supreme Court of Canada dealing with Aboriginal title. *Tsilhqot'in Nation* clarified that s. 35 rights do not automatically implicate federal legislative jurisdiction and that provincial laws of general application can apply to Aboriginal title lands. The Court made it clear that the doctrine of interjurisdictional immunity was displaced in the context of Aboriginal rights by the guarantee of those rights in s. 35, which operates as a limit on both federal and provincial jurisdiction and legislative powers, and that provincial laws of general application apply to Aboriginal title land, subject to the section 35 infringement and justification framework (at paras. 138-152).
- [34] There is no longer any question that Aboriginal rights that existed upon the enactment of s. 35(1) of the Constitution Act, 1982 are recognized and affirmed. Such rights were not created by s. 35 - they already existed. Litigation such as the this case is an exercise in identifying the exact nature and extent the specific Aboriginal rights asserted by the plaintiffs: *Tsilhqot'in Nation*; *Saik'uz First Nation and Stelat'en First Nation v. Rio Tinto Alcan Inc.*, 2015 BCCA 154 at paras. 61-63.
- [35] KFN bears the onus of establishing Aboriginal title. To do so it is required to:
- identify how pre-sovereignty rights and interests can properly find expression in modern common law terms. In asking whether Aboriginal title is established, the general requirements are: (1) "sufficient occupation" of the land claimed to establish title at the time of assertion of European sovereignty; (2) continuity of occupation where present occupation is relied on; and (3) exclusive historical occupation. In determining what constitutes sufficient occupation, one looks to the Aboriginal culture and practices, and compares them in a culturally sensitive way with what was required at common law to establish title on the basis of occupation. Occupation sufficient to ground Aboriginal title is not confined to specific sites of settlement but extends to tracts of land that were regularly used for hunting, fishing or otherwise exploiting resources and

over which the group exercised effective control at the time of assertion of European sovereignty.

### **Tsilhqot'in Nation at para. 50**

- [36] The foregoing requirements, which are grounded in a pre-sovereignty, historical evidentiary enquiry, do not implicate Canada or Canada's jurisdiction. There is no role for Canada in that enquiry. Once Aboriginal title is established, it must be recognized and affirmed and will bind both the federal and provincial Crowns: *Constitution Act, 1982*, s. 35; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 133.
- [37] Nevertheless, the question arises on the pleadings in this case as to whether the Aboriginal title has been extinguished or "displaced" by the subsequent grant of fee simple title: *Tsilhqot'in Nation* at paras. 10-13. Here, however, Canada does not hold any of the fee simple titles in question and KFN has clearly stated that it is not contesting the validity of the original grants by Canada. I am not persuaded that there is any role for Canada in that enquiry.
- [38] If Aboriginal title has not been extinguished, any infringement of it must be justified under s. 35 of the *Constitution Act, 1982*: *Tsilhqot'in Nation*, at paras. 13-16. In its pleading, KFN has set out the factual context in which it alleges that the defendants' collective infringement of its Aboriginal title is serious and unjustified: *Amended Notice of Civil Claim*, at paras. 30-50, inclusive. The supervision of Canada is not required in respect of that enquiry. Section 91(24) of the *Constitution Act, 1867* does not give Canada any authority over the matter. The doctrine of interjurisdictional immunity no longer applies in cases involving Aboriginal title. Rather, the guarantee of Aboriginal rights in s. 35 operates as a limit on both the federal and provincial powers. Neither level of government is permitted to legislate in a way that results in a meaningful diminution of an Aboriginal right, unless the infringement is justified: *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014 SCC 48 at para. 37; *Tsilhqot'in Nation*, at paras. 139, 141-142, and 151-152. In this case, KFN's claim is limited to the exercise of provincial powers, not those of Canada.
- [39] If KFN succeeds in establishing unjustified infringement, the question then arises as to the appropriate remedy. KFN claims that, in the circumstances, the remedy should be the cancellation or transfer of the fee simple titles to the Claimed Area. The claimant also seeks the implementation of the Land and Resources Management Protocols. It is the Province and the other named defendants, not Canada, who own, manage, and make decisions regarding how the lands within the Claim Area have been and are being used. KFN's claims implicate only the Province and the other defendants, not Canada.
- [40] The law of joinder in the circumstances of this case is clear: very strong reasons demonstrating necessity are required to add a defendant against the wishes of the plaintiff. The proposed new defendant must have a direct and precise interest, not merely a general interest, in the outcome of the proceeding: *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.* 2007 BCSC 1269 at para. 14; *Byrd* at para. 36; *Yestel v. New Westminster*

(City), 2012 BCSC 925 at para. 25; *Ktunaxa Nation Council v. British Columbia (Minister of Forests, Lands and Natural Resource Operations)*, 2013 BCSC 1921 at paras. 30-32.

- [41] It is noteworthy that, although MVRD has pleaded that Canada is a "necessary and indispensable" party to this proceeding, it takes no position on this application.
- [42] KFN has repeatedly and steadfastly maintained that it is not pursuing any claim or cause of action against Canada. Nothing in the pleadings as they currently stand suggests that they are. No conflict against Canada is raised by the pleading. No relief against Canada is sought. Canada is not referred to anywhere in KFN's pleading. The reference in KFN's pleading to their reserves is simply in the context of how the defendants, as fee simple owners of the Claim Area, are using those lands to the exclusion of the KFN and depriving the KFN from the ability to benefit economically from their Aboriginal rights in respect of them. The relief sought relates to the seriousness of the alleged infringements and what remedy should be afforded, if any. KFN seeks to have the fee simple ownership cancelled or transferred to them because they say that is the only way to make their rights meaningful. They also seek to require the Province to implement an effective means of identifying, recording, registering and understanding those rights, which they plead is within the exclusive jurisdiction of the Province.
- [43] In *Lax Kw'alaams Indian Band v. Canada (Attorney General)*, 2011 SCC 56, that court stated, at para.12:
- [12] Aboriginal rights litigation is of great importance to non-Aboriginal communities as well as to Aboriginal communities, and to the economic well-being of both. The existence and scope of Aboriginal rights protected as they are under s. 35(1) of the Constitution Act, 1982, must be determined after a full hearing that is fair to all the stakeholders. [Emphasis added]
- Canada is not a stakeholder in this litigation.
- [44] All of the issues that have been raised by KFN can be effectively adjudicated with the involvement of the existing defendants. The Province is a sophisticated party with extensive resources and experience in Aboriginal land claims litigation and is fully capable of defending this action to the extent it deems necessary.
- [45] Reconciliation requires that, when First Nations are required to litigate the existence and/or recognition of their Aboriginal rights, those cases be tried in the most cost effective and timely way possible. Adding a party that has, at best, a mere general interest in the outcome and who opposes any involvement can only prolong the litigation and unnecessarily add to the length, complexity and cost of the trial, without anyone's interests being advanced.
- [46] In my view, Canada should not be added as a party to this litigation. Its participation is unnecessary to ensure that all matters that have been put in issue by KFN will be effectually adjudicated. There is no question or issue between any existing party to this action and Canada that is related to or connected with its subject matter or the relief sought.

## Conclusion

[47] The application is dismissed, with costs at Scale B.

"G.C. Weatherill J."

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