

PRESS RELEASE

March 7, 2005

In a precedent setting case released today, the British Columbia Court of Appeal ruled that the provincial Crown breached its constitutional duty to accommodate the Musqueam Indian Band's aboriginal title rights when it sold the UBC Golf Course land to the University of British Columbia. The Court also awarded costs against the Crown.

In light of the Crown's breach of its constitutional duty to the Musqueam Indian Band, the Court of Appeal suspended the operation of the Order in Council authorizing the sale of the land to UBC for a period of two years in order to provide the parties the opportunity to negotiate in good faith regarding these lands and to reach some agreement. Failing agreement, the Musqueam Indian Band is free to bring the matter back to court in order to enforce UBC's undertaking to transfer the land back to the provincial Crown.

Madam Justice Southin posed the question: "Does the honour of the Crown" require that the Crown not exercise its power to sell land subject to an aboriginal title claim, when there may be little, if any, crown-held land left available to form part of a treaty settlement. In answering the question with "yes," she concluded the Crown had breached its duty to accommodate the Musqueam Indian Band in this regard.

Mr. Justice Hall and Mr. Justice Lowry also agreed that the Musqueam Indian Band's appeal should be allowed, reasoning, in part, that:

...the duty of government to consult and in appropriate cases to accommodate 'is part of a process of fair dealing and reconciliation' with an affected First Nation where aboriginal rights or title are in play. The honour of the Crown mandates such an approach.

The Court of Appeal specifically found that the duty owed to the Musqueam Indian Band (by provincial crown agent, Lands and Water British Columbia) "tended to the more expansive end of the spectrum" and acknowledged that the Crown "conceded the Musqueam had a *prima facie* case for title over the Golf Course Land..." The Court then concluded that Musqueam is entitled to a new

“meaningful consultation process in order that avenues of accommodation could be explored” because the Crown’s past “consultation process was flawed.”

The Court also observed that the UBC Golf Course land “is not the only tract of land in the Lower Mainland that is Provincial property...” and that “[h]aving regard to the wish of the appellant [Musqueam] to obtain ... an enhanced land base and as well its desire to pursue a land settlement..., the parties should be afforded a wide field for consideration of appropriate accommodative solutions.”

The Musqueam Indian Band wishes to begin its discussions with the Crown regarding this “wide field” of “accommodative solutions” and the development of a land protection measure with regard to Crown-held lands within Musqueam Traditional Territory. Musqueam’s goal has always been to repatriate some portion of their territory. The Musqueam Indian Band seeks the Crown’s immediate good faith efforts in this very important regard and wishes to commence this dialogue now.

For more information, please contact Chief Ernest Campbell, Musqueam Indian Band, at 604.263.8453 or 604.833.5799.