



Why B.C. Is Mired in First Nations Land Disputes—and Where to Go From Here

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Introduction

2025 was a big year for British Columbia. They learned a pretty tough lesson: good intentions don't necessarily translate to good governance results.

After years of celebrating the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the B.C. NDP government believed it had found the path forward for its province. From implementing UNDRIP into provincial legislation in 2019 through its Declaration on the Rights of Indigenous Peoples Act (DRIPA), to cutting bilateral governance agreements with First Nations securing control and management of public lands, to moving ahead with legally-backed title recognition agreements, they have spent the past decade pushing forward their agenda to reconcile more than 150 years of Indigenous/Crown relations with the claim that their preferred policy actions will build certainty for B.C.'s future.

But, like all other governments since 1871, we can give the Horgan/Eby governments points for trying. Unfortunately for them, and for every previous government since joining Confederation, trying comes with costs. Big costs.

British Columbia has a governance problem of its own making that dates all the way back to its founding in 1871. Until B.C. political parties acknowledge that distinction, recognize their role in creating their own mess, and act to solve it, the cycle of public panic, controversial legal battles, and ad hoc government decisions will continue.

Stability for the future rests in the hands of the B.C. government to either initiate a process to bring about generational resolution to a 155-year-old problem, or to allow it to continue to haunt its citizens for decades to follow. Whatever decision it makes, one thing is clear: simply denying the legal right of First Nations to land in B.C. is what got us into this mess. Time has shown that it won't bring about the certainty that both First Nations and Canadians in B.C. are seeking.

B.C. First Nations have pushed out more Aboriginal caselaw than any other jurisdiction in the country. And yet, after 155 years as a province, B.C. government is unable to answer the most basic questions of land governance: who owns it, who governs it, and perhaps most importantly, under which legal authority?

Governments of every political stripe—from Social Credit, to NDP, to Liberal, and to NDP again—have made policy decisions about First Nations rights, title, and governance since before B.C. joined Confederation in 1871. The problem—for the most part—is not the absence of policy solutions but rather, each party has made decisions reacting to immediate pressures, often in secrecy and in isolation, without any serious consideration for the cumulative legal, economic, political, and social consequences. Political expediency, not serious nation-building, has driven nearly every government's decision-making on this point.

The result has been a province that is forced to confront unresolved and consequential legal questions of land title every decade or two, from *Calder* in 1973, to *Delgamuukw* in 1997, to *Tsilhqot'in* in 2014, to *Cowichan Tribes* in 2025, and most recently in April 2026, *Nuchatlat*—although these last two remain open to appeal.¹ Over the years, B.C. has also been forced to manage through heightened tensions on the ground like the 1984 Meares Island protests—Canada's first logging blockade—that drew on-the-ground support from First Nations leaders and environmental groups and halted the B.C.² government's licence to log 90 percent of the island—an injunction that remains in effect to this day, more than 40 years later. And in recent years, B.C. has also had to contend with a mess of its own making through governance decisions made in secrecy, like the Haida Gwaii consent-based title declaration that left them unable to explain to impacted private property owners which laws govern their own lands.³ Although the agreement expressly preserves existing private-property rights and local-government bylaws, some legal commentators argue that questions remain about how Haida and provincial jurisdiction will be reconciled over time.⁴

Year after year, in B.C. and across Canada, a pattern has formed: when governments refuse to resolve critical questions of land, courts are called on to do the work that governments have neglected. By now, governments should understand: ignoring a problem doesn't make it go away, it just becomes a bigger and more expensive problem to fix later.

¹ *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313, <https://www.canlii.org/en/ca/scc/doc/1973/1973canlii4/1973canlii4.html?resultId=153b7123a2e24163b684e4f1140ebb36&searchId=2026-04-08T06:05:03:107/9cfc1d5655d54745919c678f29e27389>; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, <https://www.canlii.org/en/ca/scc/doc/1997/1997canlii302/1997canlii302.html?resultId=4f9beca4385c409da82ecc445bc14afc&searchId=2026-04-08T06:04:39:969/4eb61e709cbb495cabca00b9f79db5bb>; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, <https://www.canlii.org/en/ca/scc/doc/2014/2014scc44/2014scc44.html?resultId=a0273fa7fc1941daa718960381db48ea&searchId=2026-04-08T06:04:07:781/485fa9110a02418c9c845bc68b7b8c2a>; *Cowichan Tribes v. Canada* (Attorney General), 2025 BCSC 1490, <https://www.canlii.org/en/bc/bcsc/doc/2025/2025bcsc1490/2025bcsc1490.html>; *The Nuchatlat v. British Columbia*, 2026 BCCA 137, <https://www.bccourts.ca/jdb-txt/ca/26/01/2026BCCA0137.htm>.

² Friends of Clayoquot Sound, "Celebrating the 35th Anniversary of the Meares Island Tribal Park Declaration," accessed September 15, 2026, <https://focs.ca/celebrating-the-35th-anniversary-of-the-meares-island-tribal-park-declaration/>.

³ Justine Hunter, "Haida Nation's Aboriginal Title Secured through Court Order," *The Globe and Mail*, September 11, 2025, <https://www.theglobeandmail.com/canada/article-haida-nations-aboriginal-title-secured-through-court-order/>.

⁴ Cassels Brock and Blackwell, "BC Supreme Court Confirms Aboriginal Title over Haida Gwaii," accessed September 15, 2026, <https://cassels.com/insights/bc-supreme-court-confirms-aboriginal-title-over-haida-gwaii/>.

Part 1

Indian Title is “Distinctly Denied”

In order to understand the situation in B.C., it’s important to consider what happened that led us to this point—and equally important to discuss what didn’t happen that has left us in the current quagmire.

In 1871, B.C. entered Confederation with almost no treaties. The Douglas Treaties, signed between 1850 and 1854, covered only a small portion of southern Vancouver Island.⁵ Treaty 8, negotiated and concluded by the federal Crown in 1899, extended into a small northeastern part of the province, with the First Nations in B.C.⁶ adhering to it in 1900. All land between Treaty 8 and the Douglas Treaties—roughly 95 percent of B.C.’s⁷ land mass—was assumed by the Crown without negotiation, without legal agreement, and without legal extinguishment of First Nations title.⁸

This was not accidental or an administrative oversight. As exposed in the B.C. Supreme Court’s *Cowichan* decision, it was the result of a deliberate and long-standing policy approach, and, at least in the *Cowichan*’s case, sometimes involved Crown corruption.⁹

On September 3, 1863, Colonel Richard Moody, chief commissioner of lands and works as he was then, was the official responsible for administering Crown lands in B.C. While in that role, he discreetly sold himself parcels of land along the Fraser River that Crown authorities already knew were part of a Cowichan Tribe settlement. The B.C. Supreme Court confirmed the Cowichan Tribe had a historical presence at Tl’uqtnus in that territory. That land should have been set aside as a reserve, but instead, it was surveyed and sold by the Crown official responsible for its protection—to himself.

The land obtained by Colonel Moody was eventually passed on to municipalities, government agencies, and private owners, all assuming that the land had been acquired legitimately. Like every other Canadian, they trusted that previous governments had done their due diligence. The *Cowichan* decision reveals a different historical legal reality.

There’s more. When Colonel Moody left his post in 1863, Joseph Trutch succeeded him as chief commissioner of lands and works. Trutch refused to acknowledge that any First Nation held title to land. In an 1870 memo to Governor Musgrave, Trutch was clear: Indian title to public lands is “distinctly denied; it was never acknowledged by government.”¹⁰ This position would be carried forward as B.C. entered Confederation in 1871 and remains the root of B.C.’s land title chaos today.

⁵ Legislative Assembly of British Columbia, “1850—Douglas Treaties,” accessed September 15, 2026, <https://www.leg.bc.ca/learn/discover-your-legislature/1850-douglas-treaties>.

⁶ Crown-Indigenous Relations and Northern Affairs Canada, “Treaty Texts: Treaty No. 8,” November 3, 2008, <https://rcaanc-cirnac.gc.ca/eng/1100100028813/1581293624572>.

⁷ Indigenous Services Canada, “Map Room,” August 20, 2025, https://geo.sac-isc.gc.ca/Collection_de_cartes-Map_room/index_en.html; Indigenous Services Canada, “Map Room,” August 20, 2025, https://geo.sac-isc.gc.ca/Collection_de_cartes-Map_room/index_en.html; Indigenous Services Canada, “Map Room,” August 20, 2025, https://geo.sac-isc.gc.ca/Collection_de_cartes-Map_room/index_en.html; Indigenous Services Canada, “Map Room,” August 20, 2025, https://geo.sac-isc.gc.ca/Collection_de_cartes-Map_room/index_en.html.

⁸ Indigenous Services Canada, “Map Room,” August 20, 2025, https://geo.sac-isc.gc.ca/Collection_de_cartes-Map_room/index_en.html.

⁹ *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490, <https://www.canlii.org/en/bc/bcsc/doc/2025/2025bcsc1490/2025bcsc1490.html>; *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490, <https://www.canlii.org/en/bc/bcsc/doc/2025/2025bcsc1490/2025bcsc1490.html>.

¹⁰ Anthony Musgrave, “Despatch to London Regarding the Condition of Indians in Vancouver Island” (1870), The Colonial Despatches of Vancouver Island and British Columbia, <https://bcgenesis.uvic.ca/B70008.html>; Anthony Musgrave, “Despatch to London Regarding the Condition of Indians in Vancouver Island” (1870), The Colonial Despatches of Vancouver Island and British Columbia, <https://bcgenesis.uvic.ca/B70008.html>; Anthony Musgrave, “Despatch to London Regarding the Condition of Indians in Vancouver Island” (1870), The Colonial Despatches of Vancouver Island and British Columbia, <https://bcgenesis.uvic.ca/B70008.html>.

Part 2

First Nations Push Back

In the decades that followed, First Nations continued to assert their lands had never been ceded or legally transferred. They travelled to Ottawa to advocate their position to the federal government, eventually travelling to England in 1887, taking their case to the Crown directly. B.C. First Nations eventually organized, with dozens of B.C. First Nations coming together to form the Indian Rights Association around 1909 focused on land title and rights recognition.¹¹

In response to the rise in tension, negotiations between Canada and B.C. were initiated, eventually leading to the creation of the Royal Commission on Indian Affairs for the Province of British Columbia in 1912, whereby federal representative James A.J.¹² McKenna and B.C. Premier Richard McBride worked jointly to catalogue Indian reserves, discuss land additions or reductions, and make recommendations to governments that were challenged to align on land allocation. Their final report was released in 1916; however, it wouldn't be implemented until 1923 through B.C.'s¹³ Indian Affairs Settlement Act.¹⁴

First Nations were excluded from the process and rejected the commission's work on the basis that it avoided the question of title. They continued with their advocacy efforts, and by 1916, around the time of the release of the McKenna/McBride report, a larger group of B.C. First Nations had founded the Allied Tribes of British Columbia and continued advancing a legal land claim strategy.¹⁵ Governments refused to engage, and in 1927, amended the Indian Act, prohibiting First Nations from hiring lawyers to pursue land claims without government approval.¹⁶ Pressure from B.C. First Nations continued to mount. In 1951, this prohibition (Section 141 of the Indian Act, 1927) was accepted as being unjust in principle and ineffective in bringing about land certainty and stability and was repealed.¹⁷

¹¹ Leah Siegel, "Interior, Coastal Chiefs Unite," British Columbia: An Untold History, accessed September 15, 2026, <https://bcanuntoldhistory.knowledge.ca/1900/interior-coastal-chiefs-unite>.

¹² Library and Archives Canada, "Royal Commission on Indian Affairs for the Province of British Columbia," textual record, 1913–1916, <https://recherche-collection-search.bac-lac.gc.ca/eng/home/record?idnumber=133731&app=FonAndCol&resource=folderlist&ecopy=e010790221>.

¹³ Canada, Department of Indian Affairs, "Royal Commission on Indian Affairs for the Province of British Columbia," Canadiana Heritage, accessed September 15, 2026, https://heritage.canadiana.ca/view/oocihm.lac_mikan_133731.

¹⁴ *British Columbia Indian Cut-off Lands Settlement Act*, S.C. 1984, c. 2, <https://laws-lois.justice.gc.ca/eng/acts/B-8.3/page-1.html?txthl=act>.

¹⁵ Darcy Anne Mitchell, "Allied Indian Tribes of British Columbia: A Study in Pressure Group Behaviour," (thesis, University of British Columbia, 1977), <https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/831/items/1.0094337>.

¹⁶ *An Act Respecting Indians* (Indian Act), R.S.C. 1927, c. 98, <https://epe.lac-bac.gc.ca/100/205/301/ic/cdc/aboriginaldocs/stat/pdf/1927-act.PDF?nolink=1>; *An Act Respecting Indians* (Indian Act), R.S.C. 1927, c. 98, <https://epe.lac-bac.gc.ca/100/205/301/ic/cdc/aboriginaldocs/stat/pdf/1927-act.PDF?nolink=1>.

¹⁷ Crown-Indigenous Relations and Northern Affairs Canada, "A New Direction: Advancing Aboriginal and Treaty Rights," April 2, 2015, <https://www.rcaanc-cirnac.gc.ca/eng/1426169199009/1529420750631>; Crown-Indigenous Relations and Northern Affairs Canada, "A New Direction: Advancing Aboriginal and Treaty Rights," April 2, 2015, <https://www.rcaanc-cirnac.gc.ca/eng/1426169199009/1529420750631>; Crown-Indigenous Relations and Northern Affairs Canada, "A New Direction: Advancing Aboriginal and Treaty Rights," April 2, 2015, <https://www.rcaanc-cirnac.gc.ca/eng/1426169199009/1529420750631>.

With the Section 141 prohibition repealed, the Nisga'a Nation filed a claim before the courts in 1967. *Calder v British Columbia* eventually made it before the Supreme Court of Canada in 1973, where it affirmed a point that governments had long denied: Aboriginal title exists in law.¹⁸ The courts later expanded on their 1973 Aboriginal title findings. In *Delgamuukw v British Columbia* (1997), the SCC confirmed that Aboriginal title is a right to the land itself, and urged governments to negotiate.¹⁹ In *Tsilhqot'in Nation v British Columbia* (2014), the Court issued the first-ever declaration of Aboriginal title to Crown land in Canadian history.²⁰

Each of these decisions could have been a five-alarm signal that the issue of land title and private property in B.C. required an urgent policy response. Yet, nothing followed but “acknowledgement” from governments of the day. The courts continued to fill the governance vacuum.

And, while the *Cowichan Tribe* case is in the beginning stages of its climb to our country's top court, a careful read of the first-level decision reveals that it has the potential to be equally or more consequential than the others—especially as it relates to the balance of power between Aboriginal title and private property.

¹⁸ *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313, <https://www.canlii.org/en/ca/scc/doc/1973/1973canlii4/1973canlii4.html?resultId=153b7123a2e24163b684e4f1140ebb36&searchId=2026-04-08T06:05:03:107/9cfc1d5655d54745919c678f29e27389>.

¹⁹ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1569/index.do>.

²⁰ *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/14246/index.do>.

Part 3

Governments' Limited Attempts to Bring Resolution

Surely there were some elected governments in B.C. or Ottawa that “tried” to address the problem over the course of the past 100-plus years? Yes, and no.

In the decades that followed, Moody's corruption and Trutch's ignorance were compounded by governments that refused to see the situation for what it was. One after the other, B.C. governments showed little effort in bringing about a legal resolution to the question of land in their jurisdiction—nor did they get leadership on the issue out of Ottawa.

The earliest attempt to address the land question at the institutional level came from a very unlikely source: Premier Bill Vander Zalm's Social Credit government. Back in 1990, the Vander Zalm government established the B.C. Land Claims Task Force, in response to pressures created by court challenges like *Calder* and *Delgaamuukw*, and the rise of First Nations ground-level advocacy, appointed a mix of representatives from B.C.²¹ First Nations, the government of B.C., and the government of Canada. They put forth 19 recommendations in their 1991 report; however, the Social Credit party lost power before it could act.²²

The incoming NDP government led by Premier Mike Harcourt continued the project, implementing the task force's recommendations. As a result, in 1992, the B.C. Treaty Commission was established as a tripartite process involving Canada, B.C.,²³ and B.C. First Nations. And while there is no doubt that this was a well-intentioned attempt at creating a path to resolution, arguably, it failed.

The treaty failure

To understand this failure, one could consider how little the needle moved on resolving the 95 percent of land across British Columbia that remains legally unresolved—in other words, that is not covered by treaty. Unlike the rest of Canada, for the most part, B.C. entered Confederation in 1871 with very little of its land base covered by treaty: the Douglas Treaties were finalized in 1854, covering the southern parts of Vancouver Island. Later, in 1899, the Crown entered into Treaty 8 with 39 First Nations across Saskatchewan, Alberta, the Northwest Territories, and with B.C. in 1900—with eight First Nations covering the northeastern portion of B.C.

Fast forward to today, with more than 60 First Nations having initiated the modern treaty process since the launch of the B.C. Treaty Commission, very few have concluded. Today, roughly 34 years since its formation, the B.C. Treaty Commission has concluded a mere five modern treaties—a low number given the more than 200 First Nations across the province: the Tsawwassen First Nation Final Agreement

²¹ *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313, <https://www.canlii.org/en/ca/scc/doc/1973/1973canlii4/1973canlii4.html?resultId=153b7123a2e24163b684e4f1140ebb36&searchId=2026-04-08T06:05:03:107/9cfc1d5655d54745919c678f29e27389>; *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313, <https://www.canlii.org/en/ca/scc/doc/1973/1973canlii4/1973canlii4.html?resultId=153b7123a2e24163b684e4f1140ebb36&searchId=2026-04-08T06:05:03:107/9cfc1d5655d54745919c678f29e27389>.

²² British Columbia Claims Task Force, *The Report of the British Columbia Claims Task Force* (Vancouver: British Columbia Claims Task Force, 1991), https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations/report_british_columbia_claims_task_force_full.pdf.

²³ BC Treaty Commission, “BC Treaty Commission,” accessed September 15, 2026, <https://bctreaty.ca>.

(2009), the Maa-nulth First Nations Final Agreement (2011), and the Tla'amin Final Agreement (2016), and most recently in April 2026, the B.C.²⁴ government closed more than 30 years of modern treaty negotiation with the introduction of the Kitselas Treaty Act and the K'ómoks Treaty Act to bring about legal resolution in those geographical areas—both await federal ratification.²⁵ And while not a product of the B.C. Treaty Commission itself, it is worth mentioning the very first modern treaty in B.C.—the Nisga'a Final Agreement—the product of a negotiation process initiated in 1990 and concluded in 2000.²⁶ The commission process has been slow, underfunded, and adversarial by design.²⁷

Despite honest efforts to institutionalize a mechanism to bring about resolution to a centuries-old problem, by the 2010s, B.C. had treaty negotiation tables and a treaty commission, and yet time has shown us that this policy framework fell short of delivering real, tangible—and perhaps most importantly—lasting resolution to the legal question of land in B.C.

The B.C. Supreme Court's 2007 finding in *Tsilhqot'in* that they had established Aboriginal title to a substantial portion of their claimed territory, later resulting in the Supreme Court of Canada's 2014 declaration of Aboriginal title, was achieved through litigation rather than negotiation through the B.C.²⁸ Treaty Commission. It prompted Union of British Columbia Indian Chiefs Grand Chief Stewart Phillip to describe the court ruling as a "nail in the coffin" of the B.C.²⁹ treaty negotiation process. As Grand Chief Phillip pointed out, why would any First Nation accept 5 percent of its claimed territory at a negotiating table when the courts were willing to declare a much larger portion in their favour?

Up until recently, Aboriginal title challenges have been addressed in two ways: litigation and/or treaty negotiations. Under the BC NDP government, a third mechanism has been introduced: "reconciliation agreements" by way of direct political negotiations. Specifically, the 2025 Haida Title Order, which recognizes Aboriginal title over all of Haida Gwaii's lands and was secured by way of consent order through the B.C.³⁰ Supreme Court, and the 2024 shíshálh Nation Agreement, which provides a framework for shared decision-making over parts of the Sunshine Coast region.³¹

²⁴ Crown-Indigenous Relations and Northern Affairs Canada, "Tsawwassen First Nation Final Agreement," December 31, 2008, <https://www.rcaanc-cirnac.gc.ca/eng/1100100022706/1617737111330>; Crown-Indigenous Relations and Northern Affairs Canada, "Maa-nulth First Nations Final Agreement Implementation: Report 2013–2014," May 11, 2017, <https://www.rcaanc-cirnac.gc.ca/eng/1494511760118/1542997086421>; Crown-Indigenous Relations and Northern Affairs Canada, "Tla'amin Final Agreement," April 10, 2014, <https://www.rcaanc-cirnac.gc.ca/eng/1397152724601/1542999321074>.

²⁵ Office of the Premier, "Kitselas Treaty Act Introduced in B.C. Legislature," BC Gov News, April 15, 2026, <https://news.gov.bc.ca/releases/2026PREM0019-000416>; Ministry of Indigenous Relations and Reconciliation, "K'ómoks Treaty Act Introduced in B.C. Legislature," BC Gov News, April 14, 2026, <https://news.gov.bc.ca/releases/2026IRRO019-000414>.

²⁶ Crown-Indigenous Relations and Northern Affairs Canada, "Nisga'a Final Agreement and Background Information," August 8, 2024, <https://www.rcaanc-cirnac.gc.ca/eng/1100100031292/1542998607479>.

²⁷ Dirk Meissner, "B.C. Treaty Process Too Slow, Say Governments, Native Leaders," CBC News, April 12, 2015, <https://www.cbc.ca/news/canada/british-columbia/b-c-treaty-process-too-slow-say-governments-native-leaders-1.3029887>.

²⁸ *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700, <https://www.canlii.org/en/bc/bcsc/doc/2007/2007bcsc1700/2007bcsc1700.html>; *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700, <https://www.canlii.org/en/bc/bcsc/doc/2007/2007bcsc1700/2007bcsc1700.html>; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/14246/index.do>.

²⁹ David Carrigg, "Huge win for Interior natives," The Province, November 22, 2007, <https://web.archive.org/web/20081201193131/http://www.canada.com/theprovince/news/story.html?id=44bcbe05-644b-41ac-a8c2-168540b2342d>.

³⁰ Government of British Columbia, "Provincial Agreement on Haida Aboriginal Title," February 19, 2025, <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/first-nations-a-z-listing/haida-nation-council-of/haida-title-agreement>.

³¹ Ministry of Indigenous Relations and Reconciliation, "shíshálh Nation, B.C. Renew Landmark Reconciliation Agreement," BC Gov News, January 29, 2025, <https://news.gov.bc.ca/releases/2025IRRO003-000057>.

B.C. Liberals flip and flop

With a change of government in 2001, Gordon Campbell and the B.C. Liberals entered government with a different view of the B.C.–First Nations relationship than their predecessor. Campbell had recently challenged the Nisga’a Treaty in court—unsuccessfully—before taking office, and one of his first big moves as premier was to follow through on his campaign promise to hold a province-wide referendum on the principles of treaty negotiations.³²

The referendum was the first time in Canadian history that non-Indigenous voters were asked to vote on questions related to Indigenous constitutionally-recognized rights. First Nations, legal scholars, unions, and groups across the province urged British Columbians to boycott the vote.³³ Angus Reid referred to the referendum as “one of the most amateurish, one-sided attempts to gauge the public will that I have seen in my professional career.”³⁴ With only 34.5 percent of eligible voters returning their ballots, it was quite clear what the B.C.³⁵ public thought of Premier Campbell’s efforts.

Campbell reversed his course. By 2005, he had negotiated the “New Relationship Vision” with First Nations, acknowledging Aboriginal title and rights as the foundation of the Crown–First Nations relationship in B.C.³⁶ Despite efforts to shift to a “government-to-government partnership,” it was criticized as being “empty,” lacking a legislative foundation and any enforcement mechanism.

By 2009, the Campbell government was meeting privately with First Nations to develop a Recognition and Reconciliation Act.³⁷ Despite months of negotiations, there was no disclosure of the government’s intentions until a four-page discussion paper was “leaked,” leading to public calls to stop the secret land claims talks.³⁸ It was pulled before it could reach the legislature, but the approach had been established: quiet negotiations and no transparency or public accountability.

In 2011, Christy Clark stepped in to lead the B.C. government. A few years later, following the SCC’s 2014 decision in *Tsilhqot’in*, Clark publicly acknowledged the moment and noted how this was B.C.’s³⁹ chance to be on the right side of history. However, no action followed. Instead, Clark pushed through the approval of the Site C dam project on the Peace River—a project that the B.C.⁴⁰ Supreme Court would later identify in its 2021 decision as one of the several resource development projects contributing to the cumulative effects that had infringed the Blueberry River First Nation’s meaningful ability to exercise their treaty rights.

³² CBC News, “Judge Rejects Challenge to Nisga’a Treaty,” *CBC News*, July 25, 2000, <https://www.cbc.ca/news/canada/judge-rejects-challenge-to-nisga-a-treaty-1.234873>; “BC Referendum Controversy,” *The Canadian Encyclopedia*, accessed September 15, 2026, <https://thecanadianencyclopedia.ca/en/article/bc-referendum-controversy>.

³³ CBC News, “Critics Call for Boycott of B.C. Treaty Referendum,” *CBC News*, April 8, 2002, <https://www.cbc.ca/news/canada/critics-call-for-boycott-of-b-c-treaty-referendum-1.351775>.

³⁴ CBC News, “B.C. Treaty Referendum,” *CBC News*, July 2, 2004, https://www.cbc.ca/news2/background/aboriginals/bc_treaty_referendum.html.

³⁵ British Columbia, Order in Council 532/2002, 2002, https://www.bclaws.gov.bc.ca/civix/document/id/oic/arc_oic/0532_2002?; British Columbia, Order in Council 532/2002, 2002, https://www.bclaws.gov.bc.ca/civix/document/id/oic/arc_oic/0532_2002?.

³⁶ Government of British Columbia and First Nations Leadership Council, *The New Relationship* (Victoria: Government of British Columbia, 2005), https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/new_relationship_accord.pdf.

³⁷ “Gordon Campbell’s 2009 Speech from the Throne,” *The Georgia Straight*, 2009, <https://www.straight.com/article-201725/gordon-campbells-2009-speech-throne>.

³⁸ Rod Mickleburgh, “B.C. Puts Aboriginal Recognition Act on Hold,” *The Globe and Mail*, March 16, 2009, <https://www.theglobeandmail.com/news/national/bc-puts-aboriginal-recognition-act-on-hold/article20441814/>.

³⁹ *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/14246/index.do>.

⁴⁰ *Yahey v. British Columbia*, 2021 BCSC 1287, <https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc1287/2021bcsc1287.html?resultId=7462efa4c7c546deb3fe79372686648b&searchId=2026-07-10T18:23:05:517/298d0326c6e24c619d0db2d14415583e>.

By 2017, B.C. had acknowledged Indigenous rights more openly than ever before, but it failed to deliver much-needed policy reforms to address longstanding land uncertainty. With the B.C. Liberals entering government with a failed legal challenge against the Nisga'a Treaty and a controversial referendum on constitutionally protected Indigenous rights, and ending with quiet backroom talks on Indigenous title recognition, the turnabout was recognized—however, none of this resulted in a much-needed durable policy framework to bring about legal resolution to the problem.

The “well-intentioned” NDP era

A turn of government followed in 2017. While some would describe the Horgan/Eby NDP governments as “pioneering” as it relates to reconciling with Indigenous peoples, many would characterize the NDP's leadership on this front as chaotic, secretive, damaging to Indigenous reconciliation, and—ultimately—having significantly increased legal uncertainty across the province. The cumulative effect of several decisions by this government, in rapid succession, and seemingly without consideration for their compounding effect, has produced a challenging environment for economic growth.

Within weeks of taking government in 2017, the Horgan government issued mandate letters to every Cabinet minister directing them to integrate UNDRIP within their respective areas of responsibility. In 2019, he introduced the Declaration on the Rights of Indigenous Peoples Act (DRIPA)—the first within Canada—establishing UNDRIP as BC's framework for reconciliation and to take the measures necessary to bring provincial laws into alignment with it.⁴¹

David Eby, who was serving as attorney general, stated DRIPA was not intended to give UNDRIP independent legal force in domestic courts and that it served strictly as a government-to-government policy framework.⁴² At the time, there was no plan for how the full set of B.C.'s statutes would align. And yet, DRIPA was passed unanimously and was celebrated across B.C.'s full political spectrum. The feel-good nature of the moment seemed to have clouded the reality that this statute required every law in the province to align with this international declaration. As we would later learn in 2025, DRIPA produced different consequences than were originally anticipated. While the government hailed reconciliation through the adoption of an international human rights declaration into provincial legislation, the courts continued to hear Indigenous rights challenges.

In July 2021, unrelated to B.C.'s DRIPA legislation yet equally consequential, the B.C. Supreme Court ruled in *Yahey v British Columbia* that the province had breached its obligations set out in Treaty 8 by having caused—through decades of industrial approvals—negative “cumulative effects” to Blueberry River First Nation.⁴³ *Yahey* also exposed the absence of any serious provincial framework for balancing treaty rights with the broader public interest.

But what was tougher than the *Yahey* decision itself? The Horgan government did not appeal. Instead, it chose to negotiate an agreement directly with Blueberry River. The result? A \$65 million implementation agreement negotiated exclusively between the two parties, effectively leaving no coherent framework for project-related engagement for other First Nations in Treaty 8 territory and others across the rest of the province.

⁴¹ Government of British Columbia, “Alignment of Laws,” Declaration Act, July 30, 2026, https://declaration.gov.bc.ca/alignment-of-laws/?utm_source=chatgpt.com.

⁴² Vaughn Palmer, “Was B.C. Premier David Eby Really Surprised by DRIPA Court Decision?,” *Vancouver Sun*, December 9, 2025, <https://vancouversun.com/opinion/columnists/was-bc-premier-david-eby-really-surprised-by-dripa-court-decision>.

⁴³ *Yahey v. British Columbia*, 2021 BCSC 1287, <https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc1287/2021bcsc1287.html?autocompleteStr=yahey%20&autocompletePos=14>.

While this may have appeared as “the right thing to do”—especially on the heels of the 2019 DRIPA legislation—it effectively created immediate chaos on the ground for the 195 actively permitted mining, forestry, oil, and gas projects, throwing a giant wrench in the B.C. resource development wheel. By not appealing, the BC NDP government effectively shut down the possibility of a higher court providing greater clarity on this newly-introduced legal standard of “cumulative effects,” one that is now being leveraged across the country. While a balancing policy framework must not diminish constitutionally protected rights, it must also not look beyond the interests of the broader public, like resource revenue, security of jobs, responsible and timely development of resources, and—perhaps more important than ever—Canada’s energy and global trade position. Good governance requires governments to build lawful frameworks capable of balancing the interests of all its citizens—including those of First Nations—and doing so transparently.

The consequences have been real. The northeastern tip of B.C.—which aligns with Treaty 8 territory—sits on the Montney formation, one of the country’s most valuable economic assets, rich in natural gas liquids, natural gas, and oil. With increased need for LNG exports to the Asia-Pacific—a need that would help Canada to strengthen its geopolitical positioning, diversify trade, and drive economic growth—the area’s resources have never been more consequential. However, without a clear policy path in that region, the opportunity is compromised for all involved.

In 2022, Eby took office, stepping into a destabilized legal landscape of his own making. And instead of learning from his previous five years in office, and taking a more measured approach, he continued to govern in a way that would contribute to growing legal uncertainty rather than take advantage of the opportunity to reposition his government. The first years of his mandate have produced a series of experimental policy decisions, each generating new legal complexities, none appearing to be in support of a coherent legal framework, and all having a significant impact on the province’s economic and governance stability.

In April 2024, the Eby government moved to amend the Land Act in order to enable the province to negotiate shared decision-making agreements with Indigenous governing bodies concerning Crown-land use.⁴⁴ This proposal was not shared with the public. But, rather, it was discovered when a Vancouver lawyer found a public engagement webpage layers deep into a government site.⁴⁵ An Angus Reid survey revealed that 13 percent of B.C.⁴⁶ residents were aware of the proposal, despite 94 percent indicating the significance of such a change.

The Eby government withdrew its proposal after fierce public backlash, without addressing the underlying motivations that had led it to this point. A government confident in its robust policy direction wouldn’t succumb to public pressure if it were, indeed, confident in it, nor would it tuck key information about the legislative proposals in deeper corners of the World Wide Web.

⁴⁴ Government of British Columbia, “Land Act Amendments,” govTogetherBC, February 12, 2024, <https://engage.gov.bc.ca/govtogetherbc/engagement/land-act-amendments/>.

⁴⁵ Simon Little, “B.C. Government Scrapping Proposed Land Act Amendments,” *Global News*, February 21, 2024, <https://globalnews.ca/news/10308475/bc-land-act-amendments/>.

⁴⁶ Angus Reid Institute, “B.C. Land Act Amendment: Indigenous Groups, Land-Use Decision-Making, Veto,” accessed September 15, 2026, <https://angusreid.org/bc-land-act-amendment-indigenous-groups-land-use-decision-making-veto/>.

However, what made the Land Act proposal especially problematic was that it appeared the Eby government was prepared to extend shared or delegated decision-making authority to First Nations with seemingly no consideration for a fundamental risk: what happens when the Crown-Indigenous partnership is faced with opposing views? Better yet, what happens when it conflicts with the economic priorities of First Nations themselves? First Nations are not a monolith. Some will prioritize major projects and revenue generation in order to support their ambition of long-term economic independence. His proposed policy did not touch on this critical point.

And yet, the Eby government marched on. Later in 2024, his government signed an agreement with the shíshálh Nation that would extend to them management of land and resources on the Sunshine Coast.⁴⁷ This, too, was kept tucked away from the public eye. It wasn't until after the B.C. provincial election that information about this deal was shared with the public—pretty curious timing.

In May 2025, Bill 15, the Infrastructure Projects Act, was introduced.⁴⁸ It granted B.C. broad powers to fast-track infrastructure projects by bypassing regulatory requirements. This was said to be introduced in response to U.S. tariff pressures. It was, however, tabled without consultation with B.C. First Nations and quickly passed. The same government that had incorporated UNDRIP into provincial legislation in 2019 had now passed legislation that its own First Nations partners said contradicted it. The B.C. First Nations Leadership Council expressed their disappointment and publicly declared the era of trust with Premier Eby over.⁴⁹

The Eby government moseyed on. In June 2025, it signed a Land Use Agreement placing roughly 49,325 acres of Crown land in the Howe Sound/Sea to Sky corridor under Squamish Nation co-management.⁵⁰ Another bilateral agreement to add to the growing list of disconnected government decisions and deals that are forming the BC NDP government's disjointed land policy.

Against the backdrop of an aggressive NDP "land back" policy agenda, in August 2025, the B.C. Supreme Court issued its ruling in *Cowichan Tribes v. Canada*, the first ever declaration of Aboriginal title over private fee simple property—in all of Canadian history—with the BCSC declaring that certain Crown grants of fee simple title in southeast Richmond were "defective and invalid."⁵¹ Properties impacted by the decision are estimated to be worth over \$2 billion.⁵² The mayor of Richmond, B.C., sent a letter to more than 150 private property owners warning them that the Cowichan decision could potentially compromise the validity of their private property ownership.⁵³

A closer look at the *Cowichan* decision itself reveals a much older and more fundamental source of the chaos—one that traces back to Richard Moody secretly transferring to himself land known by the government of the day to be occupied by the tribe specifically.

⁴⁷ Government of British Columbia, "shíshálh Nation—British Columbia Foundation Agreement," March 23, 2026, <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/first-nations-a-z-listing/sechelt-sh-sh-lh-first-nation/sh-sh-lh-nation-british-columbia-foundation-agreement#2024FoundationAgreementRenewal>.

⁴⁸ *Bill 15—2025: Infrastructure Projects Act* (British Columbia), <https://www.bclaws.gov.bc.ca/civix/document/id/bills/billsprevious/1st43rd:gov15-1>.

⁴⁹ Wolfgang Depner, "B.C.'s Bill 15 and the Indigenous Trust," *Global News*, May 26, 2025, <https://globalnews.ca/news/11197900/bill-15-indigenous-trust/>.

⁵⁰ Squamish Nation, "2025 Land Use Agreement," June 26, 2025, <https://www.squamish.net/land-agreement/>.

⁵¹ *Cowichan Tribes v. Canada* (Attorney General), 2025 BCSC 1490, <https://www.canlii.org/en/bc/bcsc/doc/2025/2025bcsc1490/2025bcsc1490.html?resultId=2afab85f64134e5486e0213014c8a79d&searchId=2026-07-10T18:58:15:525/80e80302f36c436286f35236c5db0f5b>.

⁵² Deeded, "What You Need to Know about Aboriginal Land Claims in Canada," accessed September 15, 2026, <https://www.deeded.ca/blog/what-you-need-to-know-about-aboriginal-land-claims-in-canada>.

⁵³ Chris Lambie, "Aboriginal Title Decision 'May Compromise' Ownership Status of Richmond, B.C., Properties, Says Mayor," *National Post*, October 20, 2025, <https://nationalpost.com/news/canada/aboriginal-title-decision-may-compromise-ownership-status-of-richmond-b-c-properties-says-mayor>.

September 2025 saw the B.C. Supreme Court issue a consent order; the Eby government had negotiated the “Haida Title Order” declaring Aboriginal title over the entire terrestrial area of Haida Gwaii, describing this model as a “template” for the rest of the province.⁵⁴ Legal experts, however, were quick to point out that key elements were missing. The Haida Nation Recognition Act does not specify legal authority, causing legal experts to question whether provincial laws apply on land held in private fee simple property within the territory legally recognized by the Haida Gwaii. In an era where innovation ought to be celebrated, describing a legal agreement with such critical unresolved legal questions as a precedent-setting example for the rest of the province—a province with 95 percent legally unresolved land—either reflects an extraordinary degree of legal innovation, or it reflects blind and carefree ambition. However, given this government’s record, it may very well be a reflection of both.

Three months later, in December 2025, the B.C. Court of Appeal issued a ruling in *Gitxaala v. British Columbia* that went against an earlier statement issued by Eby a few years prior, in his role as B.C. attorney general, where he had asserted that DRIPA was not intended to give UNDRIP independent legal force in courts. Responding to the *Gitxaala* ruling, Premier Eby announced plans to amend DRIPA, legislation of his own government’s making. He described the B.C. Court of Appeal’s decision in *Gitxaala* as “dramatic, overreaching, and unhelpful.”⁵⁶ He then announced a consultation process in early 2026, covered, of course, by non-disclosure agreements.⁵⁷

Early reactions from many B.C. First Nations and groups opposed any amendments to the legislation, and the Law Society of B.C.⁵⁸ and the Canadian Bar Association have warned that the proposed changes threatened judicial independence.⁵⁹ There’s a unique brand of irony in a government amending its own legislation a mere six years after passing it, with unanimous support from all parties, no less. And, doing this, because the courts interpreted the legislation as it was written, all the while leading consultations behind closed doors, and also while being warned by legal experts that doing so threatens judicial independence—all of it makes clear that this “feel good” legislation was indeed made without serious consideration for the full slate of risks that came with it.

Nor was this an isolated pattern. Similar dynamics have played out in other legislative efforts, including the Heritage Conservation Act, where attempts to align statutory authorities with DRIPA-era commitments ran into political and practical resistance and were ultimately walked back.⁶⁰ This tells us that this is a government making sweeping commitments first, only to later be faced with the reality that it had not done its job of governing.

⁵⁴ Cassels Brock and Blackwell, “BC Supreme Court Confirms Aboriginal Title over Haida Gwaii,” accessed September 15, 2026, <https://cassels.com/insights/bc-supreme-court-confirms-aboriginal-title-over-haida-gwaii/>.

⁵⁵ *Gitxaala v. British Columbia* (Chief Gold Commissioner), 2025 BCCA 430, <https://www.canlii.org/en/bc/bcca/doc/2025/2025bcca430/2025bcca430.html?resultId=533d95bada4b4799a2b67603571d03c4&searchId=2026-07-10T19:00:31:547/4c3232b632314dd7ad13151b0dbcc25c>.

⁵⁶ Justine Hunter and Frances Bula, “Eby Accuses Courts of Jeopardizing B.C. Economy, Resource Projects,” *The Globe and Mail*, December 10, 2025, <https://www.theglobeandmail.com/canada/article-eby-accuses-courts-of-jeopardizing-bc-economy-resource-projects/>.

⁵⁷ Alessia Passafiume, “B.C. Mulls Changes to Weaken DRIPA, Shares Secret Document with First Nations Leaders,” *CityNews*, March 24, 2026, <https://halifax.citynews.ca/2026/03/24/b-c-mulls-changes-to-weaken-dripa-shares-secret-document-with-first-nations-leaders/>.

⁵⁸ Law Society of British Columbia, “Statement on Upholding the Independence of the Courts,” February 2, 2026, <https://www.lawsociety.bc.ca/news-and-engagement/news/statement-on-upholding-the-independence-of-the-courts/>.

⁵⁹ Canadian Bar Association, BC Branch, “Transparency on Proposed DRIPA Amendments,” March 11, 2026, <https://cbabc.org/our-impact/submissions/transparency-on-proposed-dripa-amendments/>.

⁶⁰ Radha Curpen et al., “B.C. Announces Latest Proposed Changes to Heritage Conservation Act,” McMillan LLP, April 15, 2026, <https://mcmillan.ca/insights/publications/b-c-announces-latest-proposed-changes-to-heritage-conservation-act/>.

The B.C. NDP'S Indigenous policy surprise bag continued to deliver into 2026. In February of this year, we learned that the federal government had signed a Rights Recognition Agreement with the Musqueam Indian Band, recognizing unextinguished title within a large area of land that covers most of the city of Vancouver.⁶¹ This time, B.C. government was allegedly absent from the negotiations. Premier Eby, who attended the signing in his own riding, subsequently admitted he was unaware of the agreement's contents.

To add to the long line of chaotic movement as it relates to Aboriginal title, in April 2026, the B.C. Court of Appeal issued its ruling in *The Nuchatlaht v British Columbia*, issuing a declaration of Aboriginal title over a portion of the Nation's traditional territory, reaffirming, once again, that claims of Aboriginal title remain a live issue in B.C.⁶² Following the release of the decision, Eby quickly stated his government was reviewing the decision and was undecided on whether they would appeal. This reaction leaves us to wonder whether the public backlash on Eby's "land back" agenda has finally had a chilling effect on his well-intentioned agenda.

⁶¹ Crown-Indigenous Relations and Northern Affairs Canada, "Musqueam and Canada Sign Historic Agreements Recognizing Rights, Stewardship, and Fisheries," February 20, 2026, <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2026/02/musqueam-and-canada-sign-historic-agreements-recognizing-rights-stewardship-and-fisheries.html>.

⁶² *The Nuchatlaht v. British Columbia*, 2026 BCCA 137, <https://www.bccourts.ca/jdb-txt/ca/26/01/2026BCCA0137.htm>.

Part 6

Where Governments Drop the Ball, Courts Govern

Through all of this, the consistent thread running through B.C.'s legal and political history is clear: when governments avoid hard decisions and fail to build durable policy frameworks that balance interests and rights, courts are forced to make it for them. This is a failure of government.

While courts can make declarations and decide on the application of laws, they can't build the framework that good governance requires. This is simply not their role. When it comes to Aboriginal law, courts can find that cumulative impacts have breached treaty obligations, but they can't design a provincial land management system—and they shouldn't.

And while courts can declare Aboriginal title over privately-held land, they can't design policy that addresses the property value of 150-plus Richmond homeowners—and they shouldn't.

The accumulation of court decisions in the absence of a sound public governance framework is producing something that no government nor court has ever wanted: a province where the fundamental legal character of land ownership is uncertain, that is no longer attracting investment, and where citizens on all sides—Indigenous and non-Indigenous alike—are anxious and frustrated with the lack of consistency and the rising uncertainty.

B.C.'s problem as it stands today: the failure to resolve Indigenous title and rights through credible public institutions.

Part 7

The Case for a Land Title Tribunal

It is quite possible that the current B.C. government believes its actions are necessary and that it is proceeding in good faith. But it is doing so without defining the new rules in public. Negotiated agreements should bring about certainty; our legal history over the last few hundred years across Canada shows us this. But in B.C., the utilization of recently designed “reconciliation agreements” and bilateral talks behind closed doors has increased uncertainty. They’ve been created in the absence of a clearly defined authoritative policy framework and with little to no public transparency.

To state the obvious: the solution to this B.C. governance problem is good governance.

The case for a different governance model is reinforced by the most recent developments in the *Cowichan* litigation. On June 29, 2026, the B.C. Supreme Court rejected an application by Montrose Properties, a major private landowner within the Cowichan title area, to be added as a party to the matter and reopen the completed trial.⁶³ Montrose Properties argued they should have an opportunity to participate in the proceedings given the potential impacts on its land, business interests, legal interests, and current and potential investments. They relied heavily on the legal principle of fairness to substantiate their position that a party directly impacted by a court’s decision should have the opportunity to be heard.

The B.C. Supreme Court dismissed their application, stating that reopening the 513-day trial would run against the principle of judicial finality and run the risk of opening the legal door to other affected landowners to join the litigation after the judgement had been issued. The court also noted that the issues raised by Montrose Properties had already been argued in full by the existing parties.

Important and most relevant to this discussion, and laid out by the BC court in paragraph four of its June 2026 decision, in 2017, Canada had applied for an order to force the Cowichan Tribes of British Columbia to deliver formal notice to private registered owners of fee simple lands in and around the claim area.⁶⁴ The B.C. Supreme Court dismissed Canada’s application, stating that the Cowichan Tribes were not seeking to invalidate or render defective the interests of the private landowners, and that their ruling did not prevent them from providing informal notice.

While Montrose Properties’ application to be added as a party and reopen the trial comes nearly a decade later, it’s worth noting that Canada, British Columbia, Richmond, and the Vancouver Fraser Port Authority all supported Montrose Properties’ application to participate—all arguing that a party directly impacted by the declaration should have an opportunity to be heard, supported by the legal principle of fairness.

⁶³ *Cowichan Tribes v. Canada* (Attorney General), 2026 BCSC 1213, <https://www.canlii.org/en/bc/bcsc/doc/2026/2026bcsc1213/2026bcsc1213.html?resultId=85a8d542b8d243cc8f5b60d298c48cb7&searchId=2026-07-10T19:30:26:804/d9b91b9d44a34e879d8296712244eed4>.

⁶⁴ *Cowichan Tribes v. Canada* (Attorney General), 2026 BCSC 1213, <https://www.canlii.org/en/bc/bcsc/doc/2026/2026bcsc1213/2026bcsc1213.html?resultId=85a8d542b8d243cc8f5b60d298c48cb7&searchId=2026-07-10T19:30:26:804/d9b91b9d44a34e879d8296712244eed4>.

The B.C. Supreme Court's position in this June 2026 ruling is reasonable. The principle of finality exists and is exercised for good reason. Litigation cannot be reopened every time another party alleges to be impacted. However, this very fact exposes an important institutional barrier to fairness. While formal notice was not required to be delivered to impacted private landowners at the outset of the legal proceedings, only when the legal consequences to their properties were made clear in the court's decision did the legal principle of finality work against their participation. The system, in its current form, runs against the principle of fairness and creates a real dilemma—either exclude impacted parties to a legal action, or allow Aboriginal title litigation to become an endless process.

This is not a smart, effective, or fair way to bring resolution to questions of land involving First Nations, fee simple owners, municipalities, provincial and federal law and regulation—and perhaps most importantly, business investment. The principle of fairness requires the participation of those parties who stand to be impacted by a court's decision. Formal notice ought to be issued, and parties directly impacted ought to have the opportunity to provide their own evidence and submissions during the process, before a final decision is made.

Specifically, what B.C. requires is an independent institution, separate from government, with a mandate to identify and formally notify all parties whose legal rights and interests risk being materially impacted by an Aboriginal title claim, provide them with a meaningful opportunity to participate in the matter, receive and assess evidence through a transparent and fair process, and make binding determinations on the validity and scope of title claims. This institution should be empowered to produce findings and recommendations—binding where appropriate—for government action to bring about legal resolution in any territory in question.

This idea builds on a made-in-Canada model: our federal Specific Claims Tribunal.⁶⁵ Established in 2008 as part of Prime Minister Harper's Justice at Last policy, the Specific Claims Tribunal is composed of superior court judges and makes binding decisions on the validity of specific claims and compensation up to \$150 million per claim.⁶⁶ It was designed explicitly to reduce reliance on courts to resolve issues related to land and treaty by providing an alternative adjudicative process.

It is not, however, legally empowered to decide on matters related to legally unresolved land, land where no treaty has been signed between Crown and First Nations—that issue is currently dealt with through three avenues: the courts, comprehensive claims, and duty to consult and accommodate caselaw. While the SCT has its challenges, it has demonstrated that an independent body can deliver justice with credibility and authority.

Worth noting as part of this discussion: the Indian Claims Commission.⁶⁷ It was established in 1991 with a mandate to review specific claims, conduct public inquiries, and help mediate disputes between First Nations and the federal government—and in many respects, it laid a foundation for the SCT. While the ICC did not carry binding authority—left to make recommendations—it offered a solution to resolve the challenge of fairness, stemming from a foundational principle that governments should not be the sole judge of grievances arising from their own conduct. Further, it offered independence, transparency, and evidence-based review.

⁶⁵ Specific Claims Tribunal Canada, "Specific Claims Tribunal," accessed September 15, 2026, <https://www.sct-trp.ca/>.

⁶⁶ Crown-Indigenous Relations and Northern Affairs Canada, "Specific Claims: Justice at Last," November 3, 2008, <https://www.rcaanc-cirnac.gc.ca/eng/1100100030516/1581289304223>.

⁶⁷ Indian Claims Commission, *Indian Specific Claims Commission, Final Report, 1991–2009* (Ottawa: Indian Claims Commission, 2009), <https://publications.gc.ca/site/eng/347894/publication.html>.

Across the pond, New Zealand's Waitangi Tribunal has operated with a similar mandate.⁶⁸ Established in 1975 as a permanent commission of inquiry, it is empowered to examine claims by Māori that the Crown has breached the principles of the Treaty of Waitangi. This tribunal conducts public hearings, receives evidence, and makes findings and recommendations—and perhaps most importantly—it does all of this within a public, accessible forum open to all New Zealanders. While its recommendations are non-binding, they are advisory in nature, they are shared publicly and accessible to the public, creating political accountability that secretive bilateral negotiations don't require. It has also generated a record, one that has informed—with credibility and authority—settlement discussions between the Māori and New Zealand government for decades. While the New Zealand context differs significantly from the Canadian one, where there are several treaties across the country, and large portions of land across the country remain legally unresolved, it demonstrates that a transparent, evidence-based, institutionally credible process produces better outcomes than backroom bilateral deals.

B.C.—and Canada—should draw the lesson: where historic land disputes remain unresolved, governments must establish credible public institutions that uphold necessary principles of accountability, fairness, transparency, and—perhaps most importantly—the rule of law.

Whatever the details, the leading principle to be upheld by B.C. and federal governments is clear: elected governments are responsible for public policy, and they should refrain from attempting to resolve questions of land title, governance, and management without a credible policy framework and vehicle. Governments' response to growing and contentious land-related questions must never be secret bilateral engagements, but rather, must be the introduction of a mechanism independent of government that hears from all directly impacted parties, weighs evidence, and provides governments with recommendations—binding or non-binding—on how to bring about resolution and certainty. This must be a mechanism that ultimately balances private property, Crown lands, and Aboriginal title, and clearly outlines jurisdiction and authority over land ownership, management, and use.

And while B.C. may be at the centre of public discourse on the question of land today, there remain unresolved questions of land in jurisdictions across Canada. At a time of global instability where war, trade disputes, energy insecurity, economic downturn, and the growing need for foreign capital, Canada must prioritize solving this emotionally and politically charged land issue. If not, courts will continue to govern in the absence of government action. And with that come delays, delays that nobody can afford.

B.C. governments—as well as Canada and other provinces—cannot continue to govern with their hands over their eyes, pretending that a fact unacknowledged is a good policy approach, as they have since Crown agent Joseph Trutch denied First Nations legal right to land title in 1871. This is not an issue that will somehow settle itself over time.

In a world challenged with growing instability, Canada cannot and must not remain a country rich in assets yet weakened by growing unresolved legal liabilities. The next chapter in this land-related reconciliation journey must start now, and it must be rooted in principles that have long governed these lands: legal principles and processes that are known and applied fairly, decisions informed by tested facts and made transparently, leadership that is accountable to its citizens, obligations are honoured and jurisdiction is respected, and—perhaps most importantly—a sense of duty and responsibility to future generations.

⁶⁸ Waitangi Tribunal, "Waitangi Tribunal," accessed September 15, 2026, <https://www.waitangitribunal.govt.nz>.

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