

A Legal Overview: Local Governments and the TRC Calls to Action

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Disclaimer: No Specific Legal Advice

- This presentation is not intended to be detailed legal advice and should not be relied upon as such
- We cannot comment on specific land use applications – each situation is specific to its facts
- Questions that seek specific answers or raise sensitive circumstances may need to be deferred

A Note on Terminology

- In this presentation, the terms “Aboriginal” and “Indian” will be used when explaining the legal and historical context the TRC in order to align with the wording used in case law and legislation. Throughout the remainder of the presentation, the terms “First Nations” or “Indigenous people” will be used.
- We acknowledge that different Indigenous peoples and groups have different preferences as to how they are referenced, and our intention is not to exclude any Indigenous peoples or groups.

Overview

- a) **Introduction**
- b) **History of the TRC Calls to Action**
 - a) **Legal Challenges:**
 - a) 1999: *Mowatt (F.S.M.) v. Clarke*, [1999] 11 WWR 301
 - b) 2003: *Cloud v. Canada (AG)*, 65 OR (3d) 492
 - c) 2005: *Blackwater v. Plint*, 2005 SCC 58
 - b) **Royal Commission on Aboriginal Peoples**
 - c) **2007: Indian Residential Schools Settlement Agreement**
- c) **Developments Post-2015, and Key Highlights**
- d) **Opportunities for Collaboration**

Introduction

- 10-year anniversary of the publication of the TRC's final report of its findings, and its 94 Calls to Action.
- Legal history as context.
- Key achievements in the last 10 years – by the Canadian government, and various local governments in BC.
- Meaningful collaboration amongst local governments and indigenous communities is key to fulfilling the mandate of the 94 Calls to Action.

Legal Challenges

- 1999: *Mowatt (F.S.M.) v. Clarke*, [1999] 11 WWR 301
- 2003: *Cloud v. Canada (AG)*, 65 OR (3d) 492
- 2005: *Blackwater v. Plint*, 2005 SCC 58

Mowatt (F.S.M.) v. Clarke, [1999] 11 WWR 301

- Civil case for vicarious liability, negligence, and breach of fiduciary duty by the Church and the Crown.
- Outcome:
 - Liability and negligence against the Defendant parties: the Anglican parties (60%), and the Government (40%)
 - The Anglican defendants were deemed to be responsible to the plaintiff for breach of fiduciary duty

Cloud v. Canada (AG), 65 OR (3d) 492

- Class action proceeding.
- The plaintiffs sought to bring an action on behalf of native students who attended the Mohawk Institute Residential School between 1922 and 1969 and their families
- Claims for damages resulting from harms to these individuals by residential school system.
- Complex procedural history; eventually led to the Indian Residential Schools Settlement Agreement.

Blackwater v. Plint, 2005 SCC 58

- The appeal arises from four actions commenced in 1996 by 27 former residents of the Alberni Indian Residential School
- Government of Canada and the United Church of Canada operated an Indian residential school in British Columbia in the 1940s, 1950s and 1960s. Aboriginal children were taken from their families pursuant to the Indian Act and sent to the school
- They were disciplined by corporal punishment.
- Some, like the appellant Mr. Barney, were repeatedly and brutally sexually assaulted

Blackwater v. Plint, 2005 SCC 58

- The trial judge found that all claims other than those of a sexual nature were statute-barred.
- A dormitory supervisor, Plint, was held liable for sexual assault. Canada was held liable for the assaults on the basis of breach of non-delegable statutory duty, and also because Canada and the Church were jointly and vicariously liable for these wrongs.
- The Supreme Court of Canada concluded that the trial judge was correct, and that both the Church and Canada were vicariously liable for the wrongful acts of Plint.

Indian Residential Schools Settlement Agrm't

- Approved by seven courts: Alberta, British Columbia, Manitoba, Ontario, Quebec, Saskatchewan, and the Yukon.
- Result of various cases and class actions by individuals who are indigenous and suffered harm as a result of residential schools.
- Collaboration of lawyers and individuals harmed by the residential school system, and class action cases to achieve Settlement Agreement

Indian Residential Schools Settlement Agm't

May 8, 2006

Indian Residential Schools Settlement Agreement

WHEREAS:

A. Canada and certain religious organizations operated Indian Residential Schools for the education of aboriginal children and certain harms and abuses were committed against those children;

B. The Parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools;

C. The Parties further desire the promotion of healing, education, truth and reconciliation and commemoration;

D. The Parties entered into an Agreement in Principle on November 20, 2005 for the resolution of the legacy of Indian Residential Schools:

- (i) to settle the Class Actions and the Cloud Class Action, in accordance with and as provided in this Agreement;
- (ii) to provide for payment by Canada of the Designated Amount to the Trustee for the Common Experience Payment;
- (iii) to provide for the Independent Assessment Process;
- (iv) to establish a Truth and Reconciliation Commission;
- (v) to provide for an endowment to the Aboriginal Healing Foundation to fund healing programmes addressing the legacy

Indian Residential Schools Settlement Agm't

SCHEDULE "N"

MANDATE FOR THE TRUTH AND RECONCILIATION COMMISSION

There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future. The truth telling and reconciliation process as part of an overall holistic and comprehensive response to the Indian Residential School legacy is a sincere indication and acknowledgement of the injustices and harms experienced by Aboriginal people and the need for continued healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.

Truth and Reconciliation Commission's Final Report – “Calls to Action”

- The Truth and Reconciliation Commission of Canada (“TRC”) published its final report in 2015, titled *“Honouring the Truth, Reconciling for the Future”*
- In this report, the TRC issued 94 “calls to action” regarding reconciliation between Canadians and Indigenous peoples (page 319).
- Address ongoing impact of residential schools
- Provide a framework for envisioning reconciliation
- 10 calls to action directly relevant to local governments

Developments Post-2015 -- Key Highlights

- Response by the Federal Government
- Response by the BC Provincial Government
- Steps taken by various local governments, and examples.

Steps Taken by Federal Government

- 2008 – Apology issued by Prime Minister Stephen Harper
- 2021 – Introduction of the *United Nations Declaration on the Rights of Indigenous Peoples Act*:
 - affirms the UN Declaration as a universal international human rights instrument and provides a framework for Canada's implementation of the Declaration

Steps Taken by Provincial Government

- Legislative developments
 - 2021 - *Declaration on the Rights of Indigenous Peoples Act*
- BC Action Plan
- Implementation of the BC Residential School Response Fund
 - supports the development and implementation of strategies and procedures for the ongoing research, identification, documentation, commemoration and protection of residential school and Indian hospital sites in search of the burial locations and unmarked graves of the Indigenous children who never came home.

Declaration Act

- *Declaration on the Rights of Indigenous Peoples Act (2021)*
- BC legislation
- Aims to formally incorporate the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”) into BC law
- BC is first jurisdiction in Canada (and in most of the world) to commit to adopt UNDRIP into law
- Response to TRC Call to Action 43.

Declaration Act and UNDRIP

- Declaration Act
 - Very brief piece of legislation
 - Purposes set out under section 2:
 - a) To affirm the application of UNDRIP to the laws of British Columbia
 - b) To contribute to the implementation of UNDRIP
 - c) To support the affirmation of, and develop relationships with, Indigenous governing bodies
- How are these purposes achieved?
 - Section 3: Province must take necessary measures to **ensure consistency of laws** with UNDRIP
 - Section 4: Must prepare and implement an **Action Plan**
 - Section 7: Province is empowered to enter **Decision-Making Agreements**

BC Action Plan

- Section 4 of Declaration Act requires BC to prepare and implement an Action Plan to achieve UNDRIP objectives
- First plan released March 30, 2022 – includes a list of actions to be taken by the Province in cooperation with Indigenous peoples from 2022 to 2027

BC Action Plan Cont'd

- 4 categories of actions:
 - Self-determination and inherent right of self-government
 - Title and rights of Indigenous peoples
 - Ending Indigenous-specific racism and discrimination
 - Social, cultural and economic well-being
- Action Plan features 89 “items” in total, many of which will impact local governments

BC Action Plan Cont'd

- Several items directly impact local governments:
- **1.11** Support inclusive regional governance by advancing First Nations participation in regional district boards
- **3.1** Develop essential training in partnership with Indigenous organizations, and deliver to the BC public service... about the history and rights of Indigenous Peoples, treaty process, rights and title
- **4.27** Review the principles and processes that guide the naming of municipalities and regional districts, and evolve practices to foster reconciliation in local processes

Where do we go from here at a LG level?

- Historical context:
 - TRC / Calls to Action – response to harms experienced by indigenous peoples as a result of colonization, residential schools, and marginalization.
 - Made possible by decades of collaboration amongst victims through court challenges.
- Actionable responses by Local Governments

Call to Action 43: Adopt and Implement UNDRIP

- Examples:
 - MOUs, protocols, or agreements to establish UNDRIP as the framework for reconciliation
 - City of Courtenay adopts UNDRIP, pledges to incorporate UNDRIP into OCP
 - District of Squamish creates UNDRIP Implementation Committee

Call to Action 47 – Reject Concepts Used to Justify Residential Schools and Land Dispossession

■ Examples:

- Land acknowledgments, renaming initiatives, and land restoration
- Renaming Initiatives in 2022 to 2024:
 - Village of Queen Charlotte restored its ancestral name to Daajing Giids
 - Chilliwack Lake Park renamed as Sxótsaqel/Chilliwack Lake Park (Skot-sa-qel)
 - Mount Douglas Park to be renamed PKOLS, which is the name for Mount Douglas in the SENCOTEN language
- City of Quesnel restores ownership of park to Lhtako Dene First Nation for cultural centre

Call to Action 23 – Enable access to culturally appropriate health care

■ Examples:

- Integrating traditional knowledge of healthcare
- District of Sicamous provides land and resources for healing centre in Splatshin First Nation
- Collaboration between Fort Nelson First Nation and Northern Rockies Regional Municipality to improve healthcare access, including plans to recruit and retaining healthcare workers, and improve health care travel services.

Reconciliation and Collaborative Governance

- Many local governments have embraced the spirit of Declaration Act and the TRC Calls to Action through other forms of collaboration
- Some examples:
 - Protocols and communication agreements
 - Land use planning
 - Servicing agreements
 - Educational and cultural engagements

Reconciliation and Collaborative Governance

Protocols and Communication Agreements

- North Cowichan and Quw'utsun Nation Alliance
 - August 2021: Executed an MOU
 - North Cowichan owns the Municipal Forest Reserve
 - Purpose of MOU: to establish a working group for North Cowichan and the Quw'utsun Nation Alliance to exchange information in relation to the stewardship and use of the Municipal Forest Reserve

Reconciliation and Collaborative Governance

Land use planning

- Town of Ladysmith and the Stz'uminus First Nation
 - Joint Ladysmith Waterfront Area Plan
 - Councils of the Town and the First Nation collaborated on planning and design
 - Recognized with a provincial planning award in 2018

Reconciliation and Collaborative Governance

Servicing Agreements

- City of Kamloops and the First Nation of Tk'emlúps te Secwépemc
- Community Transit Partnership Agreement
 - Addresses transit service issues
 - Facilitated establishment of new transit route through the First Nation's lands

Reconciliation and Collaborative Governance

District of Squamish and Squamish Nation

- Developed Squamish Community Forest Corporation
 - Joint management of local forests
- Board of corporation has equal representation from District and the Nation

Other TRC Calls to Action Applicable to Local Governments

- #17 Reduce barriers to name reclamation
- #40 Support culturally appropriate services for survivors of violence
- #57: Provide training for public servants
- #75 Protect burial sites and honour the children
- #77 Provide records to the National Centre for Truth and Reconciliation
- #87 Celebrate Indigenous achievements
- #88 Support Indigenous athlete development

Source: Women Transforming Cities, “[The TRC Calls to Action in BC Municipalities: Progress, Barriers, and Opportunities to Accelerate Reconciliation](#)”

There Is More Work To Be Done – Practical Challenges

- Limited resources
- Limited staff capacity
- Lack of awareness, knowledge-sharing and education
- Lack of clarity from senior governments (Province and Canada)
 - Jurisdictional considerations, roles, and authority
- Lack of prioritization
- Delicate balance between meaningful collaboration without burdening indigenous populations with responsibility.

Source, in part: Women Transforming Cities, “[The TRC Calls to Action in BC Municipalities](#): Progress, Barriers, and Opportunities to Accelerate Reconciliation”

Further Opportunities for Overcoming Challenges

- Collaboration between local governments and First Nations, indigenous groups, and non-profits.
- Tracking efforts by local government responding to the Calls to Action – Calls to Action as a metric for measurement / indicator of progress.
- Collaborating amongst Local Governments
 - Through various associations;
 - Through shared training opportunities;
 - Sharing accomplishments, milestones, and challenges; and
 - Sharing data, studies, findings, and resource materials.
- Maintain communication amongst Local Governments, engagement of relevant stakeholders, and ongoing collaboration.

Questions?



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