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The New Brunswick Court of Appeal Weighs in on Aboriginal Title and Private Lands

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Cases Commented On: *JD Irving, Limited et al v Wolastoqey Nation*, 2025 NBCA 129 CanLII; *Wolastoqey Nations v New Brunswick and Canada, et al.*, 2024 NBKB 203 CanLII.

The New Brunswick Court of Appeal just delivered an important decision on the relationship between Aboriginal title and private property, concluding that declarations of Aboriginal title are not available where lands have been granted to private landowners. The practical and doctrinal implications are significant and could have impacts across the country. The Wolastoqey have indicated they intended to seek leave to appeal to the Supreme Court of Canada.

Background

Six Wolastoqey First Nations, acting collectively on behalf of the Wolastoqey Nation, brought an Aboriginal title claim seeking a declaration of title over a large area of their traditional territory in western New Brunswick, which includes extensive Crown lands and roughly 250,000 privately held parcels (*Wolastoqey Nations v New Brunswick and Canada*, 2024 NBKB 203 "*Wolastoqey* NBKB"). The claim began as litigation against the federal and provincial Crowns seeking a declaration of title. As the case unfolded, the pleadings evolved in ways that sharpened how the plaintiffs described the land base at issue and, ultimately, expanded the list of defendants to include certain major industrial landholders. The statement of claim at issue here outlined three categories of land: Crown land, specifically named private land, and other private land. The Wolastoqey sought direct remedies only in relation to the first categories of land (Crown land and lands held by the named industrial defendants). The owners of other private lands were referred to as "strangers to the claim" and no direct remedies were sought in relation to their lands (*Wolastoqey* NBKB at para 17).

The province and the industrial defendants applied to strike portions of the claim. The Attorney General of New Brunswick argued that the court lacked jurisdiction to declare Aboriginal title over fee simple lands owned by unnamed private landowners not joined in the proceedings. The industrial defendants contended there was no cause of action against them, since a declaration of Aboriginal title could only be issued against the Crown (at para 51).

At the Court of King's Bench, Justice Katheryn Gregory held that a declaration of title can be made to lands held by private parties: the Crown's underlying title to land can be burdened by Aboriginal title, regardless of subsequent grants (at para 34-35, 132). As such, the Wolastoqey

claim - including to privately held lands explicitly mentioned in the statement of claim - was allowed to proceed. The court was clear, however, that any declaration would issue against the Crown alone. The industrial defendants were therefore struck from the litigation. Thus, even where private lands are at issue, "All roads lead to the Crown" (at para 97, a phrase coined by the AGNB). If a declaration of title is made, the Crown stands as the "buffer, where necessary, and a conduit, where possible, between Aboriginal and non-Aboriginal individuals and settler societies" (at para 181). The dispute enters a negotiation and reconciliation stage, where the private interests of the fee simple holders become part of the Crown's polycentric considerations (at paras 179-180). Declaratory relief structures negotiated outcomes.

In short, the industrial defendants asked to be removed from the claim on the basis that the Wolastoqey had no cause of action against them directly. The Court of King's Bench agreed that they should be removed from the claim, holding that they were not the proper parties to defend the claim. But the court also held that Aboriginal title may be declared in relation to all privately held lands in the claim, including those lands held by the industrial defendants and the return of their lands may be possible, albeit through the Crown. The industrial defendants appealed.

The Decision of the Court of Appeal

The New Brunswick Court of Appeal agreed with the NBKB that the Crown was the proper party to defend the claim and that the industrial defendants should be struck. It disagreed, however, about the availability of a declaration of Aboriginal title in respect of their lands (or, seemingly, those held by other unnamed parties).
The Court concluded:

1) A claim for Aboriginal title can only be brought against the Crown, so the lower court was correct that private landowners (the industrial defendants) should be removed from the claim
2) If private landowners are not parties to the litigation, then the court cannot make a declaration that may impact their lands (*JD Irving, Limited et al v Wolastoqey Nation*, 2025 NBCA 129 "*Wolastoqey* NBCA").

This does not, in theory, leave the Wolastoqey entirely without remedy. The Court held that a "finding" of title is possible, even where a declaration of title is not; that is, a court may "find" that the evidence required to establish Aboriginal title (exclusive occupation at the date of Crown sovereignty) has been established yet nonetheless hold that a judicial declaration recognizing such title is not available. A finding, in the Court's view, could support remedies of compensation or damages. Yet, a finding of title, without a judicial declaration confirming the rights associated with that finding, does not automatically trigger the ownership rights associated with title (such as the right to use, possess, or derive economic benefits). A finding would support a claim for damages and compensation against the Crown, but no more (at paras 7-11, 198-199).

The rationale for these conclusions is novel. Justice Drapeau identified what he referred to as "conditions precedent for the discretionary remedy of a declaration of Aboriginal title" (at para 193). These are: "(1) A finding of Aboriginal title; (2) Satisfaction of the criteria set by *Ewert* (*Ewert v Canada*, 2018 SCC 30); (3) The absence of a valid defence; and (4) No resulting injustice" (at para 193). While I won't elaborate on the point here, it is worth noting that these "conditions

precedent" are not articulated in any other case law on Aboriginal title. Nonetheless, Justice Drapeau held that the Wolastoqey claim fails at the second of these steps.

The basic rationale is this: the *Ewert* criteria outlining the availability of declaratory relief are not met in relation to the industrial defendants as there is no direct legal relationship between the parties. Given this, the industrial defendants must be struck from the claim. Once they are struck, a declaration cannot be made against the Crown if it would impact the industrial defendant's rights (at para 188-189). The issuance of a judicial declaration of Aboriginal title, even upon a successful finding of title, remains a discretionary remedy that must be exercised "according to the rules of reason and justice" (at para 195). All interested parties must have an opportunity to be heard. The industrial defendants, in Justice Drapeau's view, are interested parties because a declaration of title would immediately impact their lands. More on this in a moment.

The Court of King's Bench, then, relinquished jurisdiction to grant a declaration of Aboriginal title against the Crown concerning lands held by private parties when it (correctly, in Justice Drapeau's view) removed those parties from the action. A declaration granted without their participation would constitute a breach of procedural fairness and principles of natural justice (at para 199). While not considered explicitly, this would appear to apply to all fee simple lands in the claim area, not only those held by the Industrial defendants.

Even if a declaration were available, however, Justice Drapeau held that "no court would exercise its discretion in favour of a declaration of Aboriginal title over the appellants' lands" (at para 200). Even if his second condition precedent were met, Justice Drapeau is certain that no court would issue a declaration of title. He offers three reasons, which one presumes, though we are not told, relate to his fourth condition precedent:

1. The declaration would be granted without the appellants' participation in the process.
2. The declaration would vest rights in Wolastoqey Nation (e.g., exclusive possession) irreconcilable with the appellants' legal rights.
3. The appellants were characterized as "innocents" concerning the Crown's alleged wrongs, and remedial justice favors compensation from the Crown over dispossession of private fee simple owners in all cases (at para 200).

These reasons are essentially offered "in the alternative", as Justice Drapeau disposed of the matter in holding that the *Ewert* criteria had not been met.

In short, the NBCA held that it was "plain and obvious" that a declaration could not be granted in respect of private lands due to the denial of procedural fairness to the landowners, which effectively vitiated the court's jurisdiction to grant the remedy against the Crown over those specific parcels. The NBCA allowed the appeal, setting aside the order that permitted the claim against the Crown for a declaration of Aboriginal title "in respect of the privately owned lands in Schedule "A", including the appellants' lands in Schedule "B"" (at para 203).

The Wolastoqey Nation is entitled to pursue:

1. Its claim for a declaration of Aboriginal title and consequential relief against the Crown concerning ungranted Crown lands (Schedule "C").
2. Its claim for a finding of Aboriginal title regarding all privately owned lands in Schedule "A" (including the appellants' lands in Schedule "B"), solely for the purpose of substantiating its claim for damages and compensation against the Crown for alleged wrongs.

Comment

At the outset, it is important to note that the NBCA's decision is not about whether the Wolastoqey have proven Aboriginal title. It is a procedural matter about who the proper parties to the litigation are. As such, a high standard must be met: the party bringing the motion must show that it is "plain and obvious" that the claim has no prospect of success. Indeed, that is what the NBCA concluded. This is a notable conclusion since the BC Supreme Court recently made a declaration of title to lands held in fee simple in the *Cowichan* decision (*Cowichan Tribes v Canada (Attorney General)*, 2025 BCSC 1490 CanLII). While the NBCA unfortunately chose not to mention the *Cowichan* decision and explain the different result, we can infer the Court believes that *Cowichan* was wrongly decided in at least two respects. First, *Cowichan* granted a declaration of title in respect of lands held in fee simple by parties who were not named in, or party to, the litigation; second, the court allowed specifically identified landowners to stand as defendants (*Cowichan* at para 7). If the NBCA is correct, the BC Court was wrong on both fronts: no defendants other than the Crown should have been party to the litigation and the lands of parties not in the litigation should not have been subject to a declaration of title. On the NBCA's model, the *Cowichan* could have received a *finding* of title, which could have led to compensation, but no declaration of title. A relevant distinguishing factor *may* be that the only fee simple interests actually set aside in *Cowichan* belonged to Canada and to the City of Richmond, but the NBCA's failure to discuss *Cowichan* leaves us guessing.

That matter aside, we can consider the NBCA's stated reasons why "no court would exercise its discretion in favour of a declaration of Aboriginal title over the appellants' lands" (at para 200), even if the *Ewert* criteria were met (recall, the NBCA disposed of the matter by holding that the fourth *Ewert* criteria for determining the availability of declaratory relief was not met). Note, however, that these justifications overlap considerably with the rationale concerning *Ewert.*

1. The declaration would be granted without the appellants' participation in the process.

The NBCA held that "procedural fairness requires respect by the court for an affected party's right to be heard" (at para 200). This is undoubtedly an important principle, but the concern is premature and relies on an inflated view of what a declaration of Aboriginal title *does*. A declaration articulates the rights and obligation of the parties. That is "[t]he essence of a declaratory judgment is a declaration, confirmation, pronouncement, recognition, witness, and judicial support to the legal relationship between parties" (Lazar Sarna, The Law of Declaratory Judgments, 3rd ed (Toronto: Thomson Carswell, 2007) at 6, as cited in Malcolm Rowe & Diane Shnier, "The Limits of the Declaratory Judgment" (2022) 67:3 McGill LJ 295 at 305). It does not, without more, function as a writ of possession against non-parties. As the British Columbia Court of Appeal has noted, "considerable uncertainty remains regarding the available remedies upon a declaration of

Aboriginal title. That is because, as the Court explained in *Tsilhqot'in* at para. 90, "[t]he usual remedies that lie for breach of interests in land are available, adapted as may be necessary to reflect the special nature of Aboriginal title…" (*Kwikwetlem First Nation v British Columbia (Attorney General),* 2021 BCCA 311 CanLII, at para 91). In other words, a declaration of title need not lead to the same immediate and consequential remedies in all cases: the declaration confirms the legal rights of the parties and further remedies may be fashioned to meet the circumstances and to "reflect the special nature of Aboriginal title."

The confusion here is partly the result of the Supreme Court's statement in *Tsilhqot'in* that, when a declaration of Aboriginal title is made, the lands subject to title vest immediately in the title holding group (*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 at para 112). But this vesting need not have the immediate effect of dispossessing private parties. On Crown land, the matter is relatively simple: upon a declaration of aboriginal title, Crown lands vest in the title holding group and are no longer "Crown lands." But where privately held lands are concerned, the situation is different. Lands can vest in a title holding group without granting an immediate right of possession if lands are subject to another interest. As explained below, upon a declaration of title to lands held in fee simple, courts may adapt the remedies available to suit the circumstances. In *Saugeen,* that meant that the land had to be immediately returned (though the Court invited the possibility of converting the offending fee simple titles to life estates to ease the transition, see *Chippewas of Saugeen First Nation v Town of South Bruce Peninsula et al*., 2023 ONSC 3928 CanLII). In *Cowichan,* two processes were identified. In respect of lands held by public bodies, the grants of private property were quashed. The Declaration in this respect was suspended to give the parties time "to allow for an orderly transition of the lands is in keeping with the principle of reconciliation" (*Cowichan,* at para 3637). In respect of lands held by private parties, the declaration requires the Government of British Columbia to negotiate a solution. In the *Wolastoqey* decision at the Court of King's Bench, the court envisioned a "negotiation and reconciliation" phase where the Crown had a constitutional obligation to negotiate outcomes consistent with the honour of the Crown. In each case, the declaration of Aboriginal title – that is, the judicial confirmation of the existence of the right – was followed by distinct and context specific remedies.

The NBKB and *Cowichan* processes focus on the Crown's choices *after* a declaration. Negotiated accommodation and compensation will be the outcome in most cases. Where compensation is inadequate or inappropriate, the Crown may have to acquire private interests. Justice Drapeau noted this: "if and when a declaration is granted … the Crown will undoubtedly turn to the appellants to ensure compliance" (*Wolastoqey* NBCA, at para 196). But he failed to develop this further. First, the Crown would only turn to private parties where other solutions could not be found. Second, if the Crown did turn to these parties, it would engage them in the process, offering, for example, to purchase from willing sellers for market value. If this failed, the Crown could exercise its expropriation authority, which would require compensation, and potentially damages, to be paid. Crucially, it is at this stage that the private parties would have the opportunity to be heard. If any forced sale or expropriation were pursued, or any other actions proposed that would directly impact their interests, the parties would have avenues to challenge those actions, either through legislated processes such as those found in expropriation legislation, or otherwise. If the declaration itself impacted the value of property rights, parties may be able to pursue actions against the Crown for granting them defective titles.

Again, the procedural fairness objection is not unfounded; it is premature. This is particularly relevant when considering that the Indigenous interests at stake have constitutional protection. Recall, Justice Drapeau presumed that the pleaded facts, which asserted exclusive occupation at the date of sovereignty, were true. In such a circumstance, a court should not preclude a declaratory remedy in respect of a constitutional interest unless there is no other option available. Private parties will be heard if the time comes that the Crown seeks to acquire their lands or otherwise impact them to remedy the infringement of Aboriginal title, allaying the procedural fairness concerns.

The double standard in these concerns should also be noted. When Aboriginal title threatens private property, procedural fairness precludes their claim and title holders are told that compensation should suffice. Yet when were the Wolastoqey ever granted a right to be heard when the Crown purported to grant their lands to third parties? And why is compensation an appropriate remedy for their loss but inappropriate for private parties? If compensation is sufficient for the loss of a constitutionally protected right to land, why is it insufficient for a forestry company? (As an aside, the NBCA and much of the commentary following *Cowichan* have curiously elided the fact that private parties would always be compensated for any loss of land – we hear much about private owners being "dispossessed" and nothing about the fact that they would be compensated as with any other government expropriation in the rare circumstances where that was pursued. Justice Gregory, at the NBKB in *Wolastoqey*, noted that the Industrial defendants would have a claim in compensation against the Crown should expropriation powers be used (*Wolastoqey* NBKB at para 134)).

Justice Drapeau notes that "The notion of completely unbridled discretionary powers is the antithesis of the rule of law" (*Wolastoqey* NBCA para 195). We can all agree on this. So why craft a legal rule that gives effect to the Crown's unilateral taking of Aboriginal title lands and precludes a future court from crafting a declaratory remedy? Judicial supervision of unchecked executive power is central to upholding the rule of law. The argument that issuing a declaration without the involvement of private parties would undermine the rule of law overlooks the fact 1) the recognition of constitutional rights *can* lawfully impact third parties (consider, for example, the effect when a project approval is quashed owing to insufficient consultation) and 2) where the Crown undertakes specific actions to meet its constitutional obligations, third parties would always have the ability to be heard if a that action impacted their interests. This addresses rule of law and procedural fairness concerns without undermining Indigenous interests in ways that trigger those same concerns.

2. *The declaration would vest rights in Wolastoqey Nation (e.g., exclusive possession) irreconcilable with the appellants' legal rights.*

Justice Drapeau's second reason that "no court" could issue a declaration turns on a familiar apprehension: if a court declares Aboriginal title over lands held in fee simple, the title "vests" in the Indigenous nation with its full incidents, including exclusive use and occupation, and those incidents cannot coexist with private fee simple interests.

The Supreme Court has treated Aboriginal title as a property interest that, once declared, carries the core incidents of ownership, including a right to exclusive occupation and the right to decide

how the land will be used (*Tsilhqot'in Nation v British Columbia,* 2014 SCC 44 CanLII *at paras 73-76*). On that framing, it is tempting to conclude that fee simple and Aboriginal title are entirely incommensurate. Two parties cannot have exclusive occupation of the same land at the same time, so one must be prioritized at the expense of the other.

There is precedent, however, for a contrary view. The *Haida Recognition Act*, SBC 2023, c 24 recognizes co-existence of Aboriginal title and fee simple interests. This agreement was upheld by the BC Supreme Court, which made a declaration of Aboriginal title in respect of Haida Gwaii, including where fee simple interests exist. None of this binds the NBCA, but, as with the NBCA's decision not to engage the *Cowichan* decision, the court's reasons would have been strengthened considerably by discussion of these issues. Nonetheless, there are examples of aboriginal title and fee simple co-existing which are at least a possible answer to the NBCA's concerns.

Conventional property law provides other answers. Consider an example: in their will, a person leaves their cottage to their spouse for the duration of that person's life and then have it pass to their eldest child in fee simple. That person has created a life estate for their spouse and a fee simple in remainder for the eldest child. Crucially, the remainder interest of the eldest child is a vested property interest (*Stuartburn (Municipality) v Kiansky,* 2001 MBQB 94 CanLII). While it cannot be enjoyed in possession until the prior life estate concludes – it has not yet *vested in possession* – it is a presently existing legal interest which has *vested in interest*, to use the court's terms. Put differently, the fact that the eldest child cannot enjoy possession of the property immediately doesn't affect the incidents of the fee simple interest the child holds. We would never say, for example, that a fee simple in remainder does not include the right to alienate or the right to exclusive possession, even if the latter right is deferred. The incidents of ownership are virtually identical.

What about a situation where a fee simple interest is at stake, not a life estate? The common law does not allow a person to grant a "fee upon fee", meaning that in a will reading "to my son Bob in fee simple, then to my daughter Anne in fee simple," Anne's interest is void. But the story doesn't end there. If a person grants their property "to the city of Saint John for so long as the land is used as a public park" they have created a determinable fee simple. In this case, the grantor (or their estate) retains what is known as a possibility of reverter, which is a vested interest (acknowledging that perpetuities statutes in some provinces have modified this). What these examples show is that the common law has ready-made tools to mediate distinct interests in land, even where those interests both include rights to exclusive occupation.

These are not perfect analogies or structures that can be applied directly to title lands (though, as noted above, the trial judge in *Saugeen* saw the conversion of fee simple interests to life estates as a possible solution, despite recognizing that the court lacked jurisdiction to impose that as a remedy in the circumstances of that case). But they do show that it is too simplistic to say that because title "vests" in the title holding group upon a declaration of title, that it cannot be reconciled with fee simple interests. First, as noted above, declaratory remedies themselves are flexible enough to fashion remedies appropriate to various circumstances. Second, the common law regularly recognizes interests that are "vested" but must be delayed in possession for different reasons.

Admittedly, the fee simple interests at issue in *Wolastoqey* are different from life estates or determinable estates. Aboriginal title, however, is a *sui generis* interest that requires a novel approach to conventional rules, and specifics can be dealt with through negotiation (as the lower courts in *Wolastoqey* and *Cowichan* foresaw). The point is not that Aboriginal title somehow becomes something less than a right to exclusive use and occupation, but that remedial design can recognize title as a constitutional baseline while managing how and when conflicting interests are displaced, converted, or compensated. There is no need to treat aboriginal title and fee simple as fundamentally at odds. Rather, they should be treated as a reconciliation problem that requires transitional rules, compensation, and negotiated accommodation, not a categorical insistence that title can never be declared where fee simple exists.

Even if one accepts the NBCA's concern about the immediate implications of vesting language, a categorical remedial bar is an unusually blunt tool, especially at the pleadings stage. Declaratory relief is appropriate in constitutional disputes precisely because it can clarify the parties' legal relationship without dictating every downstream consequence at once. Courts can craft declarations that establish the constitutional baseline while leaving space for negotiated implementation and for later, parcel-specific disputes if the Crown takes steps that concretely affect particular fee simple holders (see e.g. *Ontario (Attorney General) v Restoule,* 2024 SCC 27 CanLII*, Yahey v British Columbia,* 2021 BCSC 1287 CanLII*, Shot Both Sides v Canada,* 2024 SCC 12 CanLII). That approach aligns with the Supreme Court's counsel that "reconciliation often demands judicial forbearance" (*First Nation of Nacho Nyak Dun v. Yukon,* 2017 SCC 58): courts should safeguard constitutional rights while resisting the temptation to foreclose, in the abstract, how complex reconciliation problems must be worked out in practice. Further, as the Supreme Court has noted, "The court must order any measure that is necessary to restore the honour of the Crown and thereby foster the goal of reconciliation" (*Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 (CanLII), at para 203).

3. *The appellants were characterized as "innocents" concerning the Crown's alleged wrongs, and remedial justice favors compensation from the Crown over dispossession of private fee simple owners (Wolastoqey NBCA at para 200)*

Aboriginal title litigation does not turn on whether current fee simple holders committed actionable wrongs. It turns on whether the Crown distributed interests in land in a manner consistent with constitutional constraints. When the Crown's conduct is unlawful, remedial consequences can reach third parties.

Final Thoughts

Faced with the complex issue of mediating Aboriginal title and private property interests, two paths are available to courts. They can continue the incremental development the Supreme Court has pursued, applying settled principles to new facts and outlining the legal rights and obligations of the parties to guide the Crown in negotiating reconciliatory outcomes (relying on declaratory remedies, equity, and the s 35 infringement framework in the process). Or they can re-work doctrine to categorically bar aboriginal title where private interests have been granted.

The lower court decisions in *Cowichan* and *Wolastoqey* took the first path. While the approaches are not identical and require further tweaking, generally they treat Aboriginal title as a constitutionally protected property interest and accept that this interest can generate hard problems where Crown grants and third-party interests are concerned. They do not solve those problems by rewriting title doctrine. They address them in a manner consistent with the guidance from the Supreme Court of Canada on s 35, by structuring the basis for negotiated outcomes consistent with the honour of the Crown and placing the burden on the Crown to pursue reconciliation under judicial supervision.

The NBCA takes the second path. By splitting "finding" from "declaration," and by treating fee simple tenure as a categorical barrier to declaratory relief, it does not merely manage consequences at the remedial stage; it reshapes the doctrine of Aboriginal title to avoid those consequences, creating a new model of extinguishment in the process. The categorical character of that move matters. It treats all fee simple alike. It draws no meaningful distinction between, for example, a privately owned home held under a centuries-old Crown grant that has passed through many hands, and a relatively recent grant made for industrial purposes to facilitate large-scale resource extraction. Yet those categories engage different equities, different reliance interests, and different public-law considerations. A remedial framework that cannot register those differences becomes less a mechanism of reconciliation than a blunt instrument giving effect to historical dispossession. As Justice Rowe wrote for the majority in *Desautel*, "[t]he displacement of Aboriginal peoples as a result of colonization is well acknowledged" and an interpretation of s.35 which bars relief from this displacement "would risk "'perpetuating the historical injustice suffered by aboriginal peoples at the hands of colonizers'" (*R v Desautel,* 2021 SCC 17 at para 33, citing *R v Côté*, 1996 CanLII 170 (SCC) at para 53).

In taking this second path, the NBCA's approach moves beyond *Chippewas of Sarnia* (*Chippewas of Sarnia Band v Canada (Attorney General)*, 2000 CanLII 16991 (ON CA) "*Chippewas*"). *Chippewas* did not announce a general rule that land-based relief becomes unavailable whenever fee simple interests exist. It refused relief on an unusually heavy record of delay and third-party reliance, while emphasizing that courts must exercise discretion with great care given the fundamental nature of Aboriginal property rights. As the Ontario Court of Appeal wrote, "[i]t will require exceptional circumstances for a court to withhold a remedy to protect or vindicate aboriginal title" (*Chippewas,* para 257). In categorically barring relief, the NBCA precluded consideration of such circumstances and went well beyond *Chippewas* in prioritizing private property over constitutionally protected Aboriginal title.

Governments have long known that Aboriginal title is a live legal issue. Conflicts with private property and resource allocations derived from historic Crown grants have been clearly predicted. Too often, governments have refused to confront this reality and hoped that the courts would eventually save them. A rule that converts proven title into a compensatory claim, while withholding the judicial declaration that gives title its constitutional meaning, rewards that approach. It weakens incentives to negotiate and shifts the loss entirely to Indigenous parties, the only ones whose interests have constitutional protection. A "reconciliation-friendly conclusion", to use the NBCA's framing, demands more.

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