VANCOUVER
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COURT OF APPEAL
REGISTRY

Court of Appeal File No. CA035618
Supreme Court File No. 90 0913
Supreme Court Registry: Victoria

COURT OF APPEAL

ON APPEAL FROM THE ORDER OF JUSTICE VICKERS OF THE SUPREME COURT OF BRITISH COLUMBIA, PRONOUNCED NOVEMBER 20, 2007

BETWEEN:

Roger William, on his own behalf and on behalf of all other members of the Xeni Gwet'in First Nations Government and on behalf of all other members of the Tsilhqot'in Nation

Respondent
(Plaintiff)

AND:

The Attorney General of Canada

Appellant
(Defendant)

AND:

Her Majesty the Queen in Right of the Province of British Columbia and the Regional Manager of the Cariboo Forest Region

Respondent
(Defendant)

AND:

B.C. Wildlife Federation and the B.C. Seafood Alliance; Chief Wilson and Chief Jules Respondents; First Nations Summit; and Te'mexw Nations

Intervenors

CANADA'S REPLY FACTUM TO ROGER WILLIAM ON ABORIGINAL TITLE

Counsel for the Attorney General of Canada

Brian McLaughlin / Jennifer Chow
Department of Justice
Aboriginal Law Section
900 - 840 Howe Street
Vancouver, BC V6Z 2S9
Telephone: 604-666-2061
Facsimile: 604-666-2710

Counsel for Her Majesty the Queen in the Right of the Province of British Columbia and the Manager of the Cariboo Forest Region

Patrick G. Foy, Q.C. / Kenneth J. Tyler
Borden Ladner Gervais LLP
Barristers & Solicitors
1200 Waterfront Centre
200 Burrard Street
PO Box 48600
Vancouver, BC V7X 1T2
Telephone: 604-687-5744
Facsimile: 604-687-1415

Counsel for Roger William, on his own behalf and on behalf of all other members of the Xeni Gwet'in First Nations Government and on behalf of all other members of the Tsilhqot'in Nation

David M. Rosenberg
Rosenberg & Rosenberg
Barristers & Solicitors
671D Market Hill
Vancouver, BC V5Z 4B5
Telephone: 604-879-4505
Facsimile: 604-879-4934

Counsel for the Intervenor, B.C. Wildlife Federation and the B.C. Seafood Alliance

J. Keith Lowes
Barrister & Solicitor
Suite 406 – 535 Howe Street
Vancouver, BC V6C 2Z4
Telephone: 604-681-8461
Facsimile: 604-638-0116

Counsel for the Intervenor, Chief Wilson and Chief Jules Respondents

Louise Mandell, Q.C.
Mandell Pinder
Barristers & Solicitors
422 – 1080 Mainland Street
Vancouver, BC V6B 2T4
Telephone: 604-681-4146
Facsimile: 604-681-0959

Counsel for the Intervenor, First Nations Summit

Arthur C. Pape
Pape Salter Teillet
Barristers & Solicitors
460 – 220 Cambie Street
Vancouver, BC V6B 2M9
Telephone: 604-681-3002
Facsimile: 604-681-3050

Counsel for the Intervenor, Te'mexw Nations

Karey M. Brooks
Janes Freedman Kyle Law Corporation
Suite 340 - 1122 Mainland Street
Vancouver, BC V6B 5L1
Telephone: 604-687-0549
Facsimile: 604-687-2696

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CANADA'S REPLY ARGUMENTS ON ABORIGINAL TITLE

A. At trial, the plaintiff did not dispute the Court's characterization of the "all or nothing" claim

1. At paragraphs 15 to 25 and specifically, paragraph 35 of his Respondent's factum, the Plaintiff says he "has consistently claimed the same right throughout trial (Aboriginal title) and the only uncertainty is its geographical extent." The Plaintiff's position runs contrary to the Court's consistent characterization of the Plaintiff's claim as an "all or nothing" claim for Aboriginal title. If these characterizations were incorrect, as the Plaintiff now alleges, the Plaintiff should have taken steps to correct the record. He did not.

2. No references to "portions" of the Claim Area were made by Mr. Justice Vickers, only references to the defined Claim Area itself.[1] Mr. Justice Vickers also aptly characterized the central issue as whether Aboriginal title existed and if it did exist, what the nature of that title was.[2]

3. The Plaintiff's "all or nothing" case was acknowledged several times throughout the trial:

    A. "In Action No. 90 0913 the plaintiffs seek, *inter alia*, a declaration that the Tsilhqot'in has existing aboriginal title to the **whole** of the Trapline Territory...In Action No. 98 4847 the plaintiff seeks **similar** declarations to lands in the Cariboo Forest Region of British Columbia known as the Brittany Triangle...";[3]

[1] *Nemaiah Valley Indian Band v. Riverside Forest Products Ltd.,* 2002 BCSC 1199, [2002] 10 W.W.R. 486, Reasons for Judgment, Joint Appeal Record, p. 704, para. 1; *Tsilhqot'in Nation v. British Columbia,* 2004 BCSC 549, 131 A.C.W.S. (3d) 220 (BCSC Chambers) Vickers, J., Reasons for Judgment, Joint Appeal Record, p. 750, para. 2; *William et al v. British Columbia et al,* 2004 BCSC 964, [2004] 4 C.N.L.R. 360 (B.C.S.C.), para. 13; *Tsilhqot'in Nation v. British Columbia,* 2008 BCSC 600, 167 A.C.W.S. (3d) 280, Reasons for Judgment, Joint Appeal Record, p. 852, para. 1.

[2] *William et al v. British Columbia et al,* 2004 BCSC 964, [2004] 4 C.N.L.R. 360 (B.C.S.C.), para. 13.

[3] *Nemaiah Valley Indian Band v. Riverside Forest Products Ltd.*, [1999] B.C.J. No. 2459, 37 C.P.C. (4th) 101 (S.C), Reasons for Judgment, Joint Appeal Record p. 634, para. 1; *Nemaiah Valley Indian Band v. Riverside Forest Products Ltd.,* 2001 BCSC 1641, 95 B.C.L.R. (3d) 371 (BCSC Chambers), Vickers, J., Reasons for Judgment, Joint Appeal Record, pp. 647-648, paras. 2-3; See also *Xeni Gwet'in First Nations Government v. British Columbia,* 2003 BCSC 2036, 163 A.C.W.S (3d) 1, Reasons for Judgment, Joint Appeal Record, p. 715, para. 3.

B. "...The plaintiff, on the other hand, intends to prove that infringement by logging activities in a small discrete area of the land has an impact on the environment and the wildlife in the **entire land area**."[4]

C. "The pleadings assert that the issuance of forest licences anywhere in the claim area is an interference with, and thus an infringement of, aboriginal rights and title **to the whole area.**"[5] (emphasis added)

4. Throughout the trial, Mr. Justice Vickers consistently referred to and treated the geographical location in dispute as the whole of the Claim Area:[6]

> "...there is no question of law that would dispose of the central issue in this case, which is the **existence and nature** of any aboriginal rights and aboriginal title **in the claim area**...." (emphasis added)

5. In his post-judgment ruling, Mr. Justice Vickers underscored his final judgment: "In that judgment I concluded that the plaintiff had not pleaded and did not explicitly claim Aboriginal title to **portions** of the two claim areas."[7] (emphasis added)

6. Additionally, the Court of Appeal also acknowledged the "all or nothing" claim, underscoring the correctness of Mr. Justice Vickers' characterization of the claims: [8]

> "...The relief sought in that action includes a declaration that the Tsilhqot'in (Chilcotin) have existing aboriginal title to the **whole** of the lands within the Trapline Territory...The Brittany Triangle action was commenced by the plaintiff...seeking declarations **similar** to those in the Nemiah Trapline action with respect to the lands known as the Brittany Triangle." (emphasis added)

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[4] *Nemaiah Valley Indian Band v. Riverside Forest Products Ltd.* 2003 BCSC 249, 121 A.C.W.S. (3d) 1030, Reasons for Judgment, Joint Appeal Record, p. 725, paras. 49-50.

[5] *Nemaiah Valley Indian Band v. Riverside Forest Products Ltd.,* 2003 BCSC 735, 122 A.C.W.S. (3d) 843, Reasons for Judgment, Joint Appeal Record, pp. 733-734, para. 17.

[6] *William et al v. British Columbia et al,* 2004 BCSC 964, [2004] 4 C.N.L.R. 360 (B.C.S.C.), para. 13.

[7] *Tsilhqot'in Nation v. British Columbia,* 2008 BCSC 600, 167 A.C.W.S. (3d) 280, Reasons for Judgment, Joint Appeal Record, p. 852, para. 2.

[8] *Tsilhqot'in Nation v. Canada (AG)*, 2002 BCCA 434, 3 B.C.L.R. (4th) 231, Reasons for Judgment, Joint Appeal Record, p. 658, paras. 13-14; Also *Tsilhqot'in Nation v. Canada (AG)*, 2004 BCCA 106, 237 D.L.R. (4th) 754, Reasons for Judgment, Joint Appeal Record, p. 745, para. 1.

B. Canada's 2003 Statement of Defence governed its case throughout the trial

7. At paragraph 20 of his Respondent's factum, the Plaintiff calls Canada's position "disingenuous" by referring to a March 12, 2001 Statement of Defence filed by Canada. The Plaintiff's reliance on this pleading is unwarranted as this pleading did not govern Canada's defence during trial. A brief chronology explains that only a general denial of the Plaintiff's claims governed Canada's defence at trial:

- In 2000, Canada was added as a party to this proceeding on the basis that British Columbia in its pleadings implicated Canada in a "Reserve Creation defence".[9]
- In October 22, 2002, before the commencement of trial, British Columbia deleted the Reserve Creation Defence in its revised pleading.[10] In response, Canada applied to remove itself as a party to the proceeding. That application was rejected on November 20, 2002, when the start of the trial officially began.[11]
- Shortly afterwards, the Plaintiff filed a Consolidated Fresh Statement of Claim claiming "continuous exclusive occupation of the Brittany Triangle" and "exclusive occupation of the Trapline territory."[12] On June 16, 2003, the Plaintiff then filed a Consolidated Amended Statement of Claim, the Claim that governed the remainder of the trial, without any amendment.[13]
- In response to the Plaintiff's Consolidated Amended Statement of Claim filed in 2003, Canada filed a two-page Consolidated Amended

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[9] *Xeni Gwet'in First Nations Government v. British Columbia*, 2002 BCSC 1904, 163 A.C.W.S (3d) 2, Reasons for Judgment, Joint Appeal Record, pp. 710-711, paras. 3-26; *Nemaiah Valley Indian Band v. Riverside Forest Products Ltd.*, 2001 BCSC 409, 103 A.C.W. S. (3d) 711 (BCSC Chambers), Vickers, J., Reasons for Judgment, Joint Appeal Record, p. 643, para. 2.
[10] *Xeni Gwet'in First Nations Government v. British Columbia*, 2002 BCSC 1904, 163 A.C.W.S (3d) 2, Reasons for Judgment, Joint Appeal Record, p. 709.
[11] *Xeni Gwet'in First Nations Government v. British Columbia*, 2002 BCSC 1904, 163 A.C.W.S (3d) 2, Reasons for Judgment, Joint Appeal Record, p. 713, para. 34.
[12] *Xeni Gwet'in First Nations Government v. British Columbia,* 2003 BCSC 2036, 163 A.C.W.S (3d) 1, Reasons for Judgment, Joint Appeal Record, p. 715, para. 3.
[13] Reasons for Judgment, Joint Appeal Record, p. 1.

Statement of Defence[14] which contained a general denial to the Plaintiff's case.

C. The Plaintiff was put to the strict proof at trial

8. In paragraph 23 of his Respondent's factum, the Plaintiff admits he was put by British Columbia to the strict proof of proving his case on Aboriginal title. The Plaintiff did not meet that burden as Mr. Justice Vickers discussed in his Reasons for Judgment on the Preliminary Issue.[15] The Plaintiff points to no authorities to support his argument that Mr. Justice Vickers made any palpable or overriding error in reaching the conclusion that only the "all or nothing" case was at issue at trial.

D. The Opinion Area was not shaped by the evidence

9. In response to paragraph 38 of his Respondent's factum, the Plaintiff erroneously suggests that the straight line drawn by Mr. Justice Vickers in the Opinion Area amounted to a boundary "shaped by the evidence." The boundary of the Opinion Area is an artificial boundary.[16] The Plaintiff has not pointed to any evidence to suggest that a straight line, drawn across the centre of the Brittany Triangle, conformed either to natural geographic elements, oral evidence, documentary evidence, expert or other witness testimony. In his Reasons, Mr. Justice Vickers provided no explanation as to how the evidence shaped the drawing of the straight line across the Brittany Triangle.[17]

10. Contrary to the Plaintiff's suggestion, the Opinion Area cannot be said to be "shaped by the evidence" when Mr. Justice Vickers only drew the Opinion Area at the express request of the Plaintiff and British Columbia for purposes other than the determination of the case before the Court.[18] The Opinion Area was not drawn as a basis for an actual declaration of Aboriginal title,

[14] Reasons for Judgment, Joint Appeal Record, p. 13.
[15] Reasons for Judgment, Joint Appeal Record, pp. 185-195, paras. 102-130.
[16] Reasons for Judgment, Joint Appeal Record, pp. 369, 371-372, paras. 641, 648-649.
[17] Reasons for Judgment, Joint Appeal Record, pp. 415-420, paras. 784-795.
[18] Reasons for Judgment, Joint Appeal Record, pp. 355-356, 385, 466, 476, paras. 605, 686, 958, 981-982.

but drawn to reflect the possible area to be considered as a candidate for Aboriginal title for future negotiations or a second trial.[19] In any event, the Plaintiff provides no authorities to demonstrate that Mr. Justice Vickers made any palpable or overriding error when he rejected the Plaintiff's argument that the Court can do whatever appears appropriate after a lengthy trial.[20]

11. Further, as discussed in Canada's Appellant's factum, Mr. Justice Vickers was equivocal on whether the Opinion Area met the test for Aboriginal title.[21] The Opinion Area was neither pleaded nor argued before Mr. Justice Vickers, and accordingly, in these circumstances, the Opinion Area should not form the basis for a declaration of Aboriginal title.[22]

E. Negative decision on the "all or nothing" claim

12. At paragraphs 63 to 70 of his Respondent's factum, the Plaintiff suggests that Mr. Justice Vickers made no final decision on the merits of the Plaintiff's claim. Canada disagrees. In his Reasons for Judgment, Mr. Justice Vickers did indeed make a final negative determination in regard to the Plaintiff's "all or nothing" claim.[23] For example:

A. "I am unable to conclude there was sufficient occupation of the Claim Area as a whole;"[24]

B. "I am unable to find regular use in the entire area of any of the discreet three parts that make up the whole Claim Area, Tachelach'ed, or the Eastern and Western Trapline Territories;"[25] and

C. "I was unable to find Aboriginal title existed in the entire claim area and thus, no declaration of title was made."[26]

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[19] Reasons for Judgment, Joint Appeal Record, pp. 194-195, para. 130.
[20] Reasons for Judgment, Joint Appeal Record, pp. 479-480, paras. 991-992.
[21] Reasons for Judgment, Joint Appeal Record, pp. 199-200, 385, 392, 420, 428, paras. 139, 686, 707, 795 and 825.
[22] *Walker v. Blades*, 2007 BCCA 436, (2008) 285 D.L.R. (4th) 35 (B.C.C.A.) paras. 13 and 51 [*Walker*]; *Canada Trustco Mortgage Co. v. Renard*, 2008 BCCA 343, (2008) 83 B.C.L.R. (4th) 267 (B.C.C.A.) paras. 38-42 [*Canada Trustco*]; *A. (L.L.) v. B. (A.)*, [1995] 4 S.C.R. 536, 1995 (S.C.C.) 52 (CanLII) at para. 27 [*A. (L.L.)*]; *Rodaro v. Royal Bank of Canada et al.*, 2002 CanLII 41834 (Ont.C.A.), (2002) 59 O.R. (3d) 74 (Ont. C.A.) paras. 58-72 [*Rodaro*].
[23] Reasons for Judgment, Joint Appeal Record, pp. 213, 418-420, 421-423, 446-447, 457, 465-466, 469, 476, 599, 615, paras. 174, 792, 794, 801, 805, 809, 893, 928, 957, 962, 981, 1335, and 1375.
[24] Reasons for Judgment, Joint Appeal Record, p. 457, para. 928.
[25] Reasons for Judgment, Joint Appeal Record, pp. 465-466, para. 957.

13. Canada only appeals from the "without prejudice" portion of the trial order. Any uncertainty in regard to the finality of the Aboriginal title issue arises from the impact of the "without prejudice" order, not the main order which dismissed the "all" claim. The trial Order reflects the dismissal of the Plaintiff's "all" claim. In paragraph 1, the Order reads:

> "The Plaintiff's claims for a declaration that the Tsilhqot'in has existing Aboriginal title to the Brittany Triangle and for a declaration that the Tsilhqot'in has existing Aboriginal title to the Trapline Territory are dismissed..."

14. The Plaintiff himself acknowledged the dismissal of the "all" claim in his Notice of Appeal by appeal from Mr. Justice Vickers' dismissal:

> "the appeal be allowed and this Honourable Court declare aboriginal title for the entire Claim Area."[27]

15. However, at paragraph 63 of his Respondent's factum, the Plaintiff appears to suggest that there was no dismissal of the Plaintiff's "all" claim. To the contrary, Mr. Justice Vickers was clear that the pleadings issue arose only in regard to the Plaintiff's late attempt to reframe his claim to "portions" of the Claim Area.[28]

16. At paragraphs 80 to 81 of his Respondent's factum, the Plaintiff argues that the Claim Area is the core of Tsilhqot'in traditional lands but has not pointed to any evidence to that effect. While Mr. Justice Vickers noted that the Claim Area falls within the area of asserted traditional territory, he also noted the existence of a separate action in which the Tsilhqot'in Nation claimed Aboriginal title to a vast area outside the Claim Area.[29] He made no finding that the Claim Area was the "core" of Tsilhqot'in traditional territory.

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[26] *Tsilhqot'in Nation v. British Columbia,* 2008 BCSC 600, 167 A.C.W.S. (3d) 280, Reasons for Judgment, Joint Appeal Record, p. 852, para. 2.

[27] Notice of Appeal, filed in CA035620, 14 December 2007, Reasons for Judgment, Joint Appeal Record, p. 59.

[28] Reasons for Judgment, Joint Appeal Record, pp. 185-195, paras. 102-130; *Tsilhqot'in Nation v. British Columbia,* 2008 BCSC 600, 167 A.C.W.S. (3d) 280, Reasons for Judgment, Joint Appeal Record, p. 852, para. 2.

[29] Reasons for Judgment, Joint Appeal Record, pp. 360-361, para. 619; Exhibit 400: Faxed copy of Writ of Summons filed in the matter of Chief Ervin Charleyboy on behalf of the Tsilhqot'in Nation (Plaintiff) and the

F. *Cause of Action Estoppel Would Apply to Bar Relitigation*

17. At paragraphs 48 to 62 of his Respondent's factum, the Plaintiff suggests that neither cause of action nor issue estoppel applies to the case at bar. Canada disagrees. As noted by Donald Lange in his leading text, the proper approach is to ask "whether the question has been decided in the first proceeding…if the question could have been decided, then cause of action estoppel applies."[30]

18. As stated in Canada's Appellant factum, the rule in *Henderson* should apply to prevent relitigation. The rule in *Henderson* informs both cause of action estoppel and issue estoppel—key concepts forming the doctrine of *res judicata.*[31] The key application of that doctrine in the case at bar is cause of action estoppel, and not issue estoppel as the Plaintiff suggests.

19. Cause of action estoppel applies when:[32]

    A. There is a final decision of a court of competent jurisdiction in the prior action;

    B. The parties to the subsequent action were parties to the prior action (mutuality);

    C. The cause of action in the prior action is not separate and distinct from the cause of action in the subsequent action; and

    D. The basis of the cause of action and the subsequent action was argued or **could have been argued in the prior action if the parties had exercised reasonable diligence.** (emphasis added)

20. The question of whether Mr. Justice Vickers could have decided Aboriginal title to portions of the Claim Area is a question that could have been raised

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Attorney General of Canada and Her Majesty the Queen in Right of the Province of British Columbia, Victoria Registry No. 03 5112, 10 December 2003, Appeal Book of Attorney General of Canada, p. 1.

[30] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 2d ed. (Ontario: LexisNexis Canada Inc., 2004) at 39; *Grandview v. Doering*, [1976] 2 S.C.R. 621 at 637 [*Grandview*]; *Foreman v. Niven*, 2009 BCSC 1476 (CanLII) at 10 [*Foreman*]; *Chapman v. Canada (Minister of Indian and Northern Affairs)*, 2003 BCCA 665 [*Chapman*]; *Lehndorff Management Limited v. L.R.S. Development Enterprises Ltd.*, 1980 BCCA 393 (CanLII) (B.C.C.A.) [*Lehndorff*].

[31] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 2d ed. (Ontario: LexisNexis Canada Inc., 2004) at 1.

[32] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 2d ed. (Ontario: LexisNexis Canada Inc., 2004) at 134.

by the Plaintiff in the case at bar but was not. Accordingly, the elements of cause of action estoppel are applicable on the issue of whether the Plaintiff should be permitted to relitigate a claim to Aboriginal title which includes portions of the Claim Area.

21. That cause of action estoppel would apply is demonstrated by the following:

A. Mr. Justice Vickers dismissed the Plaintiff's claim to "all" of the Claim Area. The question of whether the Plaintiff could prove Aboriginal title to "all" of the Claim Area was put in issue and directly determined by Mr. Justice Vickers. Regardless of whether this judgment is overturned on appeal, this dismissal was the Mr. Justice Vickers' "final" judgment;[33]

B. The Plaintiff's pleadings filed in the court below in 2008 in Vancouver Registry Court File No. VLC-S-S-083983[34] (the "Second Action") are instructive as to what a second trial would look like. The Plaintiff seeks a declaration of Aboriginal title to the Opinion Area in an action involving the identical parties in the present proceedings;

C. The cause of action (or the facts) set out in the Second Action seeks a declaration of Aboriginal title based on the Opinion Area as though a second trial judge would be bound by Mr. Justice Vickers's comments on the Opinion Area.[35] In substance, the Plaintiff's cause of action in the Second Cction would be the same since the Plaintiff would seek to rely on the same facts raised in this proceeding[36] and would not necessarily introduce new evidence;[37]

D. The Plaintiff could have amended his pleadings in this proceeding to claim "portions" of the Claim Area because he was required to put

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[33] *Angle v. Ministry of National Revenue*, [1975] 2 S.C.R. 248, 1974 (S.C.C.) 168 (CanLII) at 267 [*Angle*].
[34] Filed in the Vancouver Registry, Writ of Summons and Statement of Claim, 5 June 2008, in the Supreme Court of British Columbia, Court File No. VLC-S-S-083983.
[35] Filed in the Vancouver Registry, Writ of Summons and Statement of Claim, 5 June 2008, in the Supreme Court of British Columbia, Court File No. VLC-S-S-083983.
[36] Filed in the Vancouver Registry, Writ of Summons and Statement of Claim, 5 June 2008, in the Supreme Court of British Columbia, Court File No. VLC-S-S-083983.
[37] *Tsilhqot'in Nation v. British Columbia,* 2008 BCSC 600, 167 A.C.W.S. (3d) 280, Reasons for Judgment, Joint Appeal Record, p. 852, para. 4; *Phillips Estate v. Noble,* [1997] N.B.J. No. 553, 75 A.C.W.S. (3d) 939 (NB T.D.) [*Phillips*].

forward his whole case. While the issue of "portions" was not raised by the Plaintiff in the case at bar, the rule in *Henderson* and cause of action estoppel would apply to preclude him from raising the issue in a second proceeding.

22. Contrary to the position set out by the Plaintiff in paragraphs 54 to 56 in his Respondent's factum, since the cause of action in the Second Action (or similar action) is identical to the case at bar, cause of action estoppel would apply as the proper applicable doctrine, and not issue estoppel as the Plaintiff suggests.

23. In any event, issue estoppel is also subject to the *Rule in Henderson*.[38] Issue estoppel usually applies only where the cause of action is different in a second action since all issues which could have been litigated, would be captured by cause of action estoppel.

24. In regard to cause of action estoppel, the Plaintiff has not demonstrated any special circumstances that would permit relitigation. For the Plaintiff, a second trial is not an occasion to introduce new evidence and thus a new cause of action, but is an occasion to reargue his case on the same evidence.[39]

25. This situation does not give rise to special circumstances. Special circumstances in relation to *res judicata* require the plaintiff to "...show that the new facts he has discovered could not have been ascertained by reasonable diligence on his part and presented by him..."[40] For example, in a land ownership dispute, even where a plaintiff applied to adduce fresh evidence, the Court held on both cause of action estoppel and issue estoppel that the matter would not be reopened.[41]

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[38] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 2d ed. (Ontario: LexisNexis Canada Inc., 2004) at 53-60 and 303; *United Pacific Capital v. Piché*, 2005 BCSC 671, 140 A.C.W.S. (3d) 455 paras. 22-24 [*Piché*]; *Gubbels v. Fitterer et al*, 2006 BCSC 795, 150 A.C.W.S. (3d) 1157 [*Gubbles*].
[39] *Tsilhqot'in Nation v. British Columbia*, 2008 BCSC 600, 167 A.C.W.S. (3d) 280, Reasons for Judgment, Joint Appeal Record, p. 852, para. 4.
[40] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 2d ed. (Ontario: LexisNexis Canada Inc., 2004) at 134.
[41] *Phillips Estate v. Noble*, [1997] N.B.J. No. 553, 75 A.C.W.S. (3d) 939 (NB T.D.) [*Phillips*].

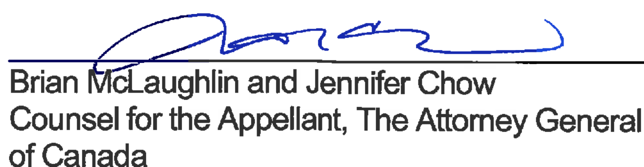
26. Additionally, a review of the Plaintiff's Second Action demonstrates his pursuit of a claim to Aboriginal title only in relation to the Opinion Area."[42] It can be inferred that the Plaintiff is not pursuing the larger 60% claim to land outside of the Claim Area (subject to the current appeal) further supporting Canada's alternative position that claims outside the Claim Area should not be relitigated.[43]

27. At paragraphs 32 and 42 of the Respondent's factum, the Plaintiff suggests that in Aboriginal title cases, even after an advance costs order and 340 days of trial, a litigant should be entitled to relitigate where he did not put forward an issue in the proceeding. The Plaintiff's position requires the Court to ignore the application of the doctrine of *res judicata*, cause of action estoppel, the *Rule in Henderson* and by implication other doctrines such as abuse of process by relitigation[44] and collateral attack.[45]

28. It is important in Aboriginal title litigation, as in all litigation, that (a) there be an end in order to ensure the proper administration of justice; and (b) no party should be vexed twice by the same cause.[46]

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Vancouver, B.C. this 8th day of October, 2010.



Brian McLaughlin and Jennifer Chow
Counsel for the Appellant, The Attorney General of Canada

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[42] Filed in the Vancouver Registry, Writ of Summons and Statement of Claim 5 June 2008, in the Supreme Court of British Columbia, Court File No. VLC-S-S-083983, para. 11.
[43] Filed in the Vancouver Registry, Writ of Summons and Statement of Claim 5 June 2008, in the Supreme Court of British Columbia, Court File No. VLC-S-S-083983, para. 11.
[44] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 2d ed. (Ontario: LexisNexis Canada Inc., 2004) at 371-393.
[45] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 2d ed. (Ontario: LexisNexis Canada Inc., 2004) at 401-409.
[46] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 2d ed. (Ontario: LexisNexis Canada Inc., 2004) at 4-5.

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