

Honouring Quw'utsun (Cowichan) Nation History, Culture & Contributions in National Indigenous History Month & on National Indigenous Peoples Day

National Indigenous History Month in Canada, celebrated each June, honours the history, cultures and contributions of the Indigenous peoples of Canada. The summer solstice of every year, June 21, is also National Indigenous Peoples Day.

In honour of the Quw'utsun (Cowichan) Nation – today comprised of the Cowichan Tribes, Stz'uminus First Nation, Penelakut Tribe, Halalt First Nation and Lyackson First Nation members – we provide the following history of their people, culture and homeland at Tl'uqtnus. Every statement below is a cited quote from the B.C. Supreme Court after full trial in *Cowichan Tribes v. Canada*, 2025 BCSC 1490. The Quw'utsun Nation plaintiffs persevered with their evidence through over 500 days of trial (the longest in Canadian history).

A. History of the Thriving Quw'utsun (Cowichan) Nation at Tl'uqtnus and the South Arm of the Fraser River (i.e. the Quw'utsun River)

1. “[T]he Quw'utsun mustimuhw or Cowichan were an Aboriginal people, nation, or group at the time of contact and at the assertion of Crown sovereignty in 1846.”¹
2. “The Cowichan were an Indigenous people in the early 1790s at the time of European contact.”² “[T]he 11 local groups who comprised the Cowichan had a practice, custom, or tradition of fishing the south arm of the Fraser River for food prior to, at and continuing after European contact.”³ “[T]he Cowichan primarily pursued sockeye salmon, but fished whatever was available in the river.”⁴ “The Cowichan ... fished all the runs as they presented themselves in the river.”⁵ “The Cowichan fished for species year-round as they presented in the river, and were not limited to salmon.”⁶
3. “The Cowichan practice, custom or tradition of fishing for food was integral to their distinctive culture, including fishing the south arm for food. It was a focal point of their annual seasonal round.”⁷ “[T]he Cowichan had a perpetual right to fish the south arm, which they fished year round and seasonally, independent of any extraterritorial right of access obtained through kinship or permission.”⁸ “[T]he Cowichan did not historically require or seek the permission of Musqueam or any other Indigenous groups to fish the south arm.”⁹

¹ *Cowichan Tribes v Canada (Attorney General)*, 2025 BCSC 149 at para. 498.

² *Ibid* at para 3223.

³ *Ibid* at para 3510.

⁴ *Ibid* at para 3505.

⁵ *Ibid* at para 3507.

⁶ *Ibid* at para 3508.

⁷ *Ibid* at para 3510.

⁸ *Ibid* at para 3487.

⁹ *Ibid* at para 3486.

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4. “The Cowichan were a proprietary people with proprietary laws”.¹⁰ “[T]he Cowichan had a recognized proprietary interest in the lands and waters in the vicinity of their village at Tl’uqtinus.”¹¹ “[T]he testimony of Mrs. James and Luschiim ... spoke about Tl’uqtinus being part of the Quw’utsun homeland or stl’ulnup.”¹²

5. “[A]bout 2,250 Cowichan occupied the village on the Lands of Tl’uqtinus in season as at 1846. ... The Quw’utsun stl’ulnup on the Lands of Tl’uqtinus was a huliitun - a place that sustained and kept them alive.”¹³ “The Cowichan physically occupied a portion of the Lands of Tl’uqtinus prior to, at and after 1846, through 1859 and onward. They did so through regular use, management and cultivation of the lands as part of their traditional way of life.”¹⁴

6. “The Cowichan had a thriving village on the Cowichan Title Lands where they annually came to harvest fish and plants. They landed hundreds of canoes on the waterfront in the summer months to fish the Fraser River. The Cowichan Title Lands were an important centre where the Cowichan resided together while processing their vital food sources.”¹⁵

7. “The Cowichan’s occupation of their village demonstrated a permanent and regular presence on the Lands of Tl’uqtinus. They physically occupied the land through the construction of a village comprised of permanent post and beam frames. They occupied the land seasonally, en masse, as a collective, year after year. This communicated to other Indigenous groups and settlers that the village belonged to the Cowichan. From an Indigenous perspective, the evidence shows that village at Tl’uqtinus was inexorably tied to the Cowichan’s way of life, culture and seasonal round. It was the Cowichan’s stl’ulnup where they gathered to fish and harvest to sustain themselves through the winter. From a common law perspective, the Cowichan possessed the land through their permanent village, cultivated land and physical presence.”¹⁶

8. “The Cowichan exercised effective control over their land. There is no evidence of other Indigenous groups occupying this village. At the relevant time, in the first half of the 18th century, the Cowichan were the dominant Indigenous group on the lower Fraser River, in terms of size and strength. They had many warriors and strength in numbers. They used intimidation and force to deter challenges from other groups. They established reputation as a dangerous Nation with fierce warriors. These were strong messages to other Indigenous groups, who tended to avoid the Cowichan, and unless they were invited, they should not enter the Cowichan village and surrounding lands.”¹⁷

9. “[T]he Cowichan did not stay with relatives or other tribes while on the south arm, or disperse among mainland residents. They held a proprietary interest in their village and surrounding lands. They did not require permission from other groups to occupy their village and surrounding lands. The Cowichan were

¹⁰ *Ibid* at para. 1236.

¹¹ *Ibid* at para. 1240.

¹² *Ibid* at para. 658.

¹³ *Ibid* at para. 1243.

¹⁴ *Ibid* at para. 1244.

¹⁵ *Ibid* at para. 2334.

¹⁶ *Ibid* at para. 1245.

¹⁷ *Ibid* at para. 1537.

numerically stronger than the tribes with winter villages on the Fraser, such as the Musqueam, ... Their intimidation of other tribes on the Fraser River is inconsistent with the Cowichan being present pursuant to kinship ties."¹⁸ "[K]inship-based permission operated at the family level, not at the tribal or collective level. It was also provided on a temporary and conditional basis, depending on kinship ties, and not permanently or as part of an annual round."¹⁹ "[T]he Quw'utsun had a perpetual right to occupy ... their village and surrounding lands accessed by trails as a matter of Central Coast Salish customary law."²⁰

10. "Musqueam had a permanent village on the north arm of the Fraser River, and a small village at Tree Island at the mouth of the Pitt River. The extent of Musqueam's full territory has not been established, ..." ²¹ "Where Musqueam submits the plaintiffs' characterization of traditional Coast Salish site-based permission arrangements is unduly narrow, I find Musqueam's characterization is unduly broad and extends far beyond any area over which they had control. I find that the Cowichan's intention and capacity to control the Claim Area applied to the Musqueam. There is a lack of evidence that Musqueam used or occupied the Claim Area at the relevant time period, or ever."²² "Musqueam has overstated their power over the river, ..." ²³ "Musqueam ... did not control the south arm."²⁴

11. "[T]he Cowichan had the capacity and intention to exclusively control their village land and some surrounding areas on the south arm of the Fraser River prior to and as at 1846."²⁵ "The descendants of the Cowichan Nation ... have Aboriginal title to a portion of the Lands of Tl'uqtnus, within the ... meaning of s. 35(1) of the *Constitution Act, 1982*."²⁶ "Schedule "A" ... is provided as a visual aid, where the black line depicts the boundary of the Cowichan Title Lands."²⁷ "

12. "[T]he Cowichan continued to return to their village every summer through the 1870s and beyond. They collectively moved with their wall planks until they transitioned to mat houses. The annual migration of Cowichan back and forth across the Georgia Strait occurred as part of their traditional seasonal round."²⁸ "[T]he Cowichan... continued to use their land every summer to fish, through the 1870s and into the early 20th century."²⁹ The descendants of the Cowichan Nation ... have an Aboriginal right to fish the south (i.e. main) are for the Fraser River for food purposes within the meaning of s. 35(1) of the *Constitution Act, 1982*."³⁰

¹⁸ *Ibid* at para. 1365.

¹⁹ *Ibid* at para. 1367.

²⁰ *Ibid* at para 1368.

²¹ *Ibid* at para. 1488.

²² *Ibid* at para. 1502.

²³ *Ibid* at para 1526.

²⁴ *Ibid* at para 1528.

²⁵ *Ibid* at para. 1538.

²⁶ *Ibid* at para. 3724(1).

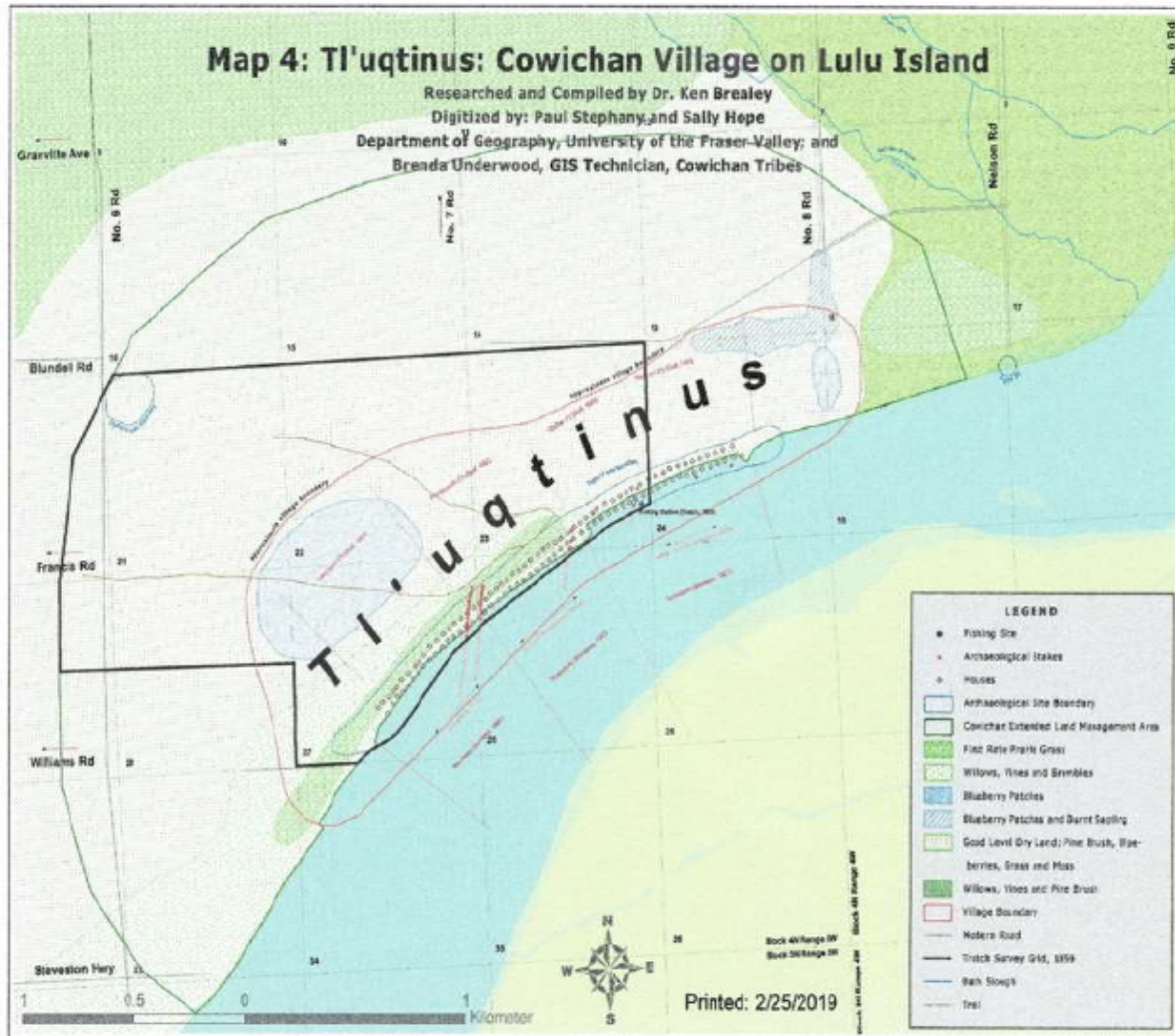
²⁷ *Ibid* at para 8 (Executive Summary).

²⁸ *Ibid* at para. 1242.

²⁹ *Ibid* at para. 2654.

³⁰ *Ibid* at para. 3724(6).

SCHEDULE "A"



B. History of the Oppressive Crown Conduct at Tl'uqtinus and the Quw'utsun Nation Resistance

13. "In 1853, Governor James Douglas told the Cowichan that the Queen had given him a special charge to treat them with justice and humanity, so long as they remained at peace with the settlements. This was a solemn promise that engaged the honour of the Crown, which is a constitutional principle that requires the Crown to act honourably in its dealings with Indigenous peoples."³¹ "[T]he promise was made to induce the Cowichan, who were a strong military force at the time, to remain peaceful."³² "This promise was not upheld."³³

³¹ *Ibid* at para. 6.

³² *Ibid* at para. 1726.

³³ *Ibid* at para. 3.

14. "In 1859 and 1860, Douglas appropriated – essentially, meaning removed or set apart – Indian settlements from the Crown's land disposition processes (which included sale and pre-emption). These settlements were set aside for the purpose of eventual Indian reserve creation. ... The first purchase of the Cowichan Title Lands was made by Richard Moody who was the Chief Commissioner of Lands and Works for the Colony of British Columbia and was tasked with ensuring that Indian reserves were created at sites of Indian settlements. Because occupied Indian settlements were appropriated, and could not be sold, most of the Crown grants in the Cowichan Title Lands were made without statutory authority."³⁴

15. "Colonial policy was to preserve Indian settlement lands. Instead, Moody caused the Lands and Works Department to sell some of the Cowichan's settlement to himself."³⁵ "The lands were largely purchased by prominent, absentee settlers, such as CCLW Moody, who purchased some Cowichan Title Lands in 1863 shortly before leaving the Colony, never to return."³⁶

16. "On July 20, 1871, British Columbia was admitted to Canada ... the *BC Terms of Union* set out the means by which British Columbia would join the Confederation."³⁷ "Article 13 of the *BC Terms of Union* provided a framework for the continued creation of Indian reserves."³⁸ "The evidence ... establishes that the Cowichan Title Lands were Indian Settlement Lands at the time of Confederation and after."³⁹

17. "The evidence is clear that the Cowichan were dispossessed of their lands between 1871 and 1914, when the lands were transferred to settlers. Nonetheless, the Cowichan maintained a substantial cultural connection to the Claim Area, ...".⁴⁰ "[T]he post-Confederation Crown grants in Cowichan Title Lands were made without constitutional authority, because the Ordinances and statutes that those Crown grants were issued under were constitutionally limited by Article 13 of the *BC Terms of Union*. British Columbia exceeded its constitutional authority each time it issued a Crown grant of fee simple interest in the Cowichan Title Lands."⁴¹

18. "In 1877, the Cowichan asserted their rights to the land and fishery at Tl'uqtinus. Joint Indian Reserve Commissioner Sproat wrote: 'They complained that they had heard that white men had bought the fishing station on the Lower Fraser River, where they had always been accustomed to get their winter food'.⁴² "As Commissioner Sproat wrote to the Lieutenant Governor in 1878, ... 'the Province might have to buy out the interests of white settlers.'"⁴³

19. "[I]n a March 28, 1890 letter ... to Peter McTiernan, Indian Agent, ... Cowichan fishers claimed a 'reserve on the Fraser River ... known as Kluck-tins'⁴⁴ [Tl'uqtinus]. "In 1906, Cowichan Chief Silpaymult and other Indigenous leaders petitioned King Edward VII directly, ..., regarding land grievances in British Columbia based

³⁴ *Ibid* at para. 6.

³⁵ *Ibid* at para. 1850.

³⁶ *Ibid* at para. 2654.

³⁷ *Ibid* at para. 1911.

³⁸ *Ibid* at para. 1912.

³⁹ *Ibid* at para. 1971.

⁴⁰ *Ibid* at para. 658.

⁴¹ *Ibid* at para. 2081.

⁴² *Ibid* at para. 1216.

⁴³ *Ibid* at para. 2597.

⁴⁴ *Ibid* at para. 1708.

on ‘Indian title’ and insufficient allotment of reserves.”⁴⁵ “In 1909, the Cowichan requested a Crown fiat to have their Aboriginal title case heard in court, but they were rejected.”⁴⁶

20. “In 1911, the Cowichan petitioned the Premier of British Columbia, requesting that the issue of their Aboriginal title be submitted to the courts. They also petitioned King Edward VII in person again through their Chief Tsilpaymilt (or Silpaymjult), who travelled to England seeking reference to the Judicial Committee of the Privy Council. ... In 1913, Chief Tsilpaymilt wrote the Prime Minister to inquire of the petitions they had laid before the Crown. No Crown fiat was ever issued allowing the Cowichan to access the courts based on their Aboriginal title.”⁴⁷

21. “The Cowichan were barred from bringing their claim without a fiat [i.e. Crown permission] until at least 1974, when the *Crown Proceedings Act*, S.B.C. 1974, c. 24 was enacted.”⁴⁸ “Even after 1974, the Cowichan were continuously pursuing and negotiating their Aboriginal title claim.”⁴⁹ “In the 1990s, the plaintiffs began pursuing their Aboriginal title claim within the BC Treaty Commission process.”⁵⁰ “They have relentlessly sought to resolve their claim in and out of court and through various processes.”⁵¹

22. “The Cowichan have faced over a century of colonial disruption that has interfered with their ability to fish the south arm for food. Yet, ... fishing the south arm for food still has a profound significance to their core identity and way of life, and remains essential to their culture.”⁵² “Colonial disruption impacted the Cowichan’s ability to continue their practice of fishing the south arm for food. ... the plaintiffs have maintained that practice as best they can by pursuing fishing opportunities relentlessly.”⁵³

23. “The situation we find ourselves in today is the product of the Crown’s failure to address the Cowichan’s claim, historically, and in modern times.”⁵⁴ “The cloud over the Cowichan Title Lands arose from the inaction of colonial officials and provincial officials in the 19th century who failed to protect the Cowichan village as an Indian reserve and sold the land out from under the Cowichan to absentee settlers, with CCLW Moody purchasing some for himself. The Crown did not take steps in response to the Cowichan’s complaint to Commissioner Sproat in the 1870s, at which time Sproat cautioned that failure to address such circumstances may necessitate the Province buying back the land from settlers.”⁵⁵

24. “The Crown grants of fee simple interest in the Cowichan Title Lands ... unjustifiably infringe the Cowichan Nation Aboriginal title to these lands.”⁵⁶ “The plaintiffs are entitled to seek the return of their st’l’ulnup, where the Cowichan people gathered and carried out their traditional practices, such as fishing,

⁴⁵ *Ibid* at para. 1220.

⁴⁶ *Ibid* at para. 3120.

⁴⁷ *Ibid* at para. 1221.

⁴⁸ *Ibid* at para. 3120.

⁴⁹ *Ibid* at para. 3121.

⁵⁰ *Ibid* at para. 3122.

⁵¹ *Ibid* at para. 3128.

⁵² *Ibid* at para 3391.

⁵³ *Ibid* at para 3489.

⁵⁴ *Ibid* at para. 3550.

⁵⁵ *Ibid* at para. 3583.

⁵⁶ *Ibid* at para. 3724(2).

where are integral to their culture. That this land is unique and is of critical importance to the Cowichan Nation was established through the testimony of Cowichan elders, ..."⁵⁷

25. "Now that Aboriginal title is declared, the Crown must re-evaluate its historical conduct and its ongoing impacts on the Cowichan in light of the Cowichan's established Aboriginal title and the fiduciary duty that the Crown owes going forward. ... the ongoing presence of infringing fee simple interests is continued Crown dealing and discretionary control of the land."⁵⁸

26. "BC's fiduciary duty to the Cowichan is engaged, and going forward, it must be complied with. It is difficult to conceive of a more significant interference than the Crown grants of fee simple interest. The Province now owes a fiduciary obligation to the Cowichan in respect of their Aboriginal title lands that are currently held by private landowners in the form of fee simple estates. The same is true with respect to soil and freehold of highways that it vested in Richmond in the Cowichan Title Lands."⁵⁹

27. "[T]he Crown, acting without authority, historically granted interests in the Cowichan Title Lands to private owners, and now must work with the Cowichan to resolve Cowichan Aboriginal title with existing third party interests."⁶⁰ "The private fee simple title holders have no relationship with the Cowichan and the plaintiffs do not seek to invalidate their fee simple interests in this action."⁶¹

28. "BC must act honourably in negotiating reconciliation of the Cowichan's Aboriginal title with the private fee simple interests and with BC's vesting of soil and freehold interests in Richmond. Such a declaration does not dictate a result but requires meaningful negotiations which seek to maintain the honour of the Crown and restore the Cowichan-Crown relationship."⁶²

29. "Canada's fee simple titles and interests in Lot 1 in Sections 27 and 22 (except those in the YVR Fuel Project Lands), Lot 2 in Section 23, and Lot 9 in Sections 23 and 26, and Richmond's fee simple titles and interests in Lot E in Sections 23 and 26 and Lot K in Section 27, are defective and invalid."⁶³ "The declaration is aimed at giving effect to Cowichan's Aboriginal title, reconciling the interests with the broader public interest and maintaining mutually respectful relationships between Indigenous and non-Indigenous peoples. A period to allow for an orderly transition of the lands is in keeping with the principle of reconciliation. I suspend this declaration for 18 months. During this 18-month period, the Cowichan, Canada and Richmond will have the opportunity to make the necessary arrangements."⁶⁴

⁵⁷ *Ibid* at para. 3552.

⁵⁸ *Ibid* at para. 3675.

⁵⁹ *Ibid* at para. 3679.

⁶⁰ *Ibid* at para. 3689.

⁶¹ *Ibid* at para 3543.

⁶² *Ibid* at para. 3692.

⁶³ *Ibid* at paras. 3636, 3724(3).

⁶⁴ *Ibid* at paras. 3637-3638.

SCHEDULE "B"

