Admissibility Of Expert Evidence: Songhees Nation V. British Columbia, 2017 BCSC 387 (Bracken J.), 8 March 2017

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The Supreme Court of British Columbia made an order relating to the admissibility of expert evidence in the underlying Douglas Treaty action.

The underlying actions involves separate claims by the Songhees Nation and the Esquimalt Nation relating to the lands near Cadboro Bay in Victoria. The plaintiffs allege that the Crown breached the terms of a treaty signed in 1850, and that the Crown failed to fulfil a term of the treaty allowing their ancestors to retain their village sites and enclosed fields. The trial of these actions has been adjourned on several occasions. Most recently, the trial date was vacated due to the Esquimalt Nation appealing an order of the case management judge about its ability to pursue an Aboriginal title claim.

In February 2016, the Court heard an application about the admissibility of new reports by Dr. John Lutz, a history professor at the University of Victoria, tendered by the Songhees Nation. The court's decision had been delayed due to the applications by the Esquimalt Nation to amend their pleadings, and a subsequent appeal, but there was a request by the Songhees for a decision to be issued at this time.

The additional material in the Lutz reports mostly relates to new documents found by Dr. Lutz through his research, and concern an alleged "pattern of behaviour" by the colonial government in failing to set aside lands for Aboriginal groups. British Columbia did not object to the new materials being admitted into evidence, but wanted adequate time to file a response report.

Bracken J. reviewed the delays that have occurred in this case. There had been an earlier decision about the exchange of expert reports in August 2012: 2012 BCSC 1269 (summarized in our e-newsletter of 4 September 2012). A more recent decision in April 2014 set strict deadlines for the exchange of expert reports in the spring of 2014. An application by the Songhees Nation in January 2015 to introduce further evidence from Dr. Lutz was rejected due to these earlier timelines.

The Court agreed that there would be no prejudice to the defendants that could not be compensated by costs. Bracken J. ordered that the Songhees Nation serve their additional material by 30 April 2017, and that response reports be filed no later than 45 days before the commencement of the trial.

https://courts.gov.bc.ca/jdb-txt/sc/17/03/2017BCSC0387.htm

By

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