

September 28, 2021

Yahey v. British Columbia, 2021 BCSC 1287

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Overview

Background

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Background

1899

Treaty 8 negotiated, with several First Nations adhering to the Treaty or being added to the Treaty up until 1914. In 1900, Blueberry's ancestors adhered to Treaty 8.

March 2015

Blueberry filed its Notice of Civil Claim against the Province.

June 2015

Blueberry unsuccessfully sought an injunction to prevent the Province from auctioning several timber sale licences arguing the planned logging would contribute to existing serious cumulative effects in their territory.

August 2016

Blueberry filed a second injunction unsuccessfully seeking an order preventing the Province from authorizing further oil and gas development, processing, transportation, and logging in Blueberry's territory. Judge encouraged parties to negotiate a solution.

June 2018

Blueberry and the Province reached an initial adjournment agreement which suspended court proceedings while Blueberry and the Province attempted to use new processes to manage resource development concerns in Blueberry's Territory.

May 2019

Trial commenced.

November 2020

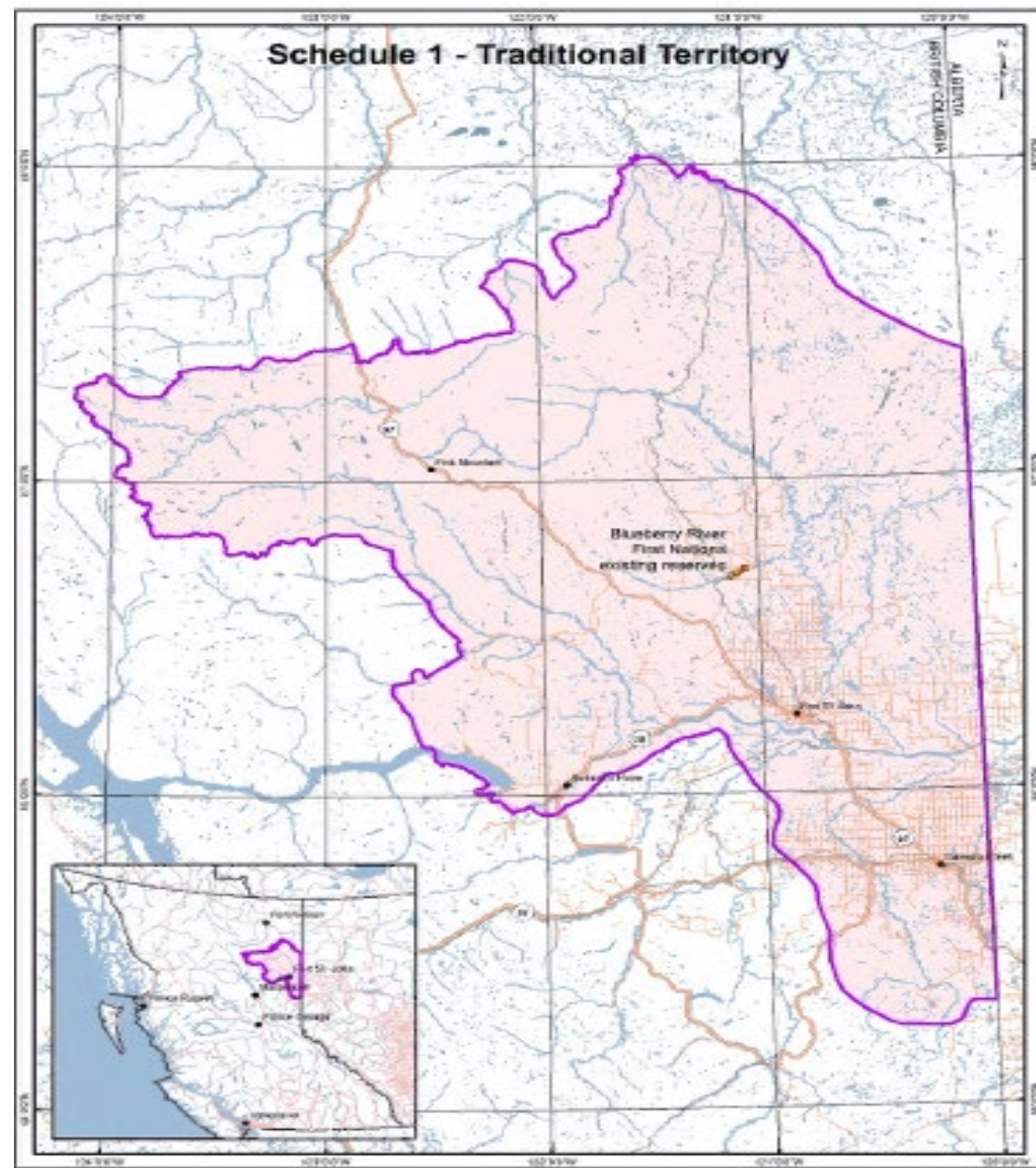
Trial concluded.

June 29 2021

Decision released. Marks the start of the 6-month timeline for BC-BRFN negotiation.

July 2021

The Province formally decides not to appeal the decision.



Scope of Treaty 8 Rights

- Treaty 8 protects Blueberry's **way of life** from forced interference and protects their rights to hunt, trap and fish in their territory.
- “**way of life**” is described by the Court as “survival, as well socialization methods, legal systems, trading patterns, cultural and spiritual beliefs and practices, patterns of land use, and ways of generating and passing on knowledge.” (para 215)

Implementing the Treaty

key criticisms of BC's regulatory
regimes

- Lack of effective mechanisms to consider treaty rights and how cumulative impacts affect those rights
- Disconnect or lack of communication between government agencies and decision makers
- Lack of meaningful response to FN concerns
- Lack of guidance on CE and its impacts on treaty rights for decision makers

Infringement and Justification

- Court focuses infringement analysis on whether treaty rights can be **meaningfully** exercised, not on whether the rights can be exercised at **all**. This includes an analysis of impacts on the **way of life** as this concept grounds the exercise of treaty rights to hunt, trap and fish.
- Once infringement has been established, onus shifts to the Crown to demonstrate it is **justified**.

Declarations

1. In causing and/or permitting the cumulative impacts of industrial development on Blueberry's treaty rights, the Province has breached its obligation to Blueberry under Treaty 8, including its honourable and fiduciary obligations. The Province's mechanisms for assessing and taking into account cumulative effects are lacking and have contributed to the breach of its obligations under Treaty 8;
2. The Province has taken up lands to such an extent that there are not sufficient and appropriate lands in the Blueberry Claim Area to allow for Blueberry's meaningful exercise of their treaty rights. **The Province has therefore unjustifiably infringed Blueberry's treaty rights in permitting the cumulative impacts of industrial development to meaningfully diminish Blueberry's exercise of its treaty rights in the Blueberry Claim Area;**
3. The Province may not continue to authorize activities that breach the promises included in the Treaty, including the Province's honourable and fiduciary obligations associated with the Treaty, or that unjustifiably infringe Blueberry's exercise of its treaty rights; and **(suspended for 6 months)**
4. The parties must act with diligence to consult and negotiate for the purpose of establishing timely enforceable mechanisms to assess and manage the cumulative impact of industrial development on Blueberry's treaty rights, and to ensure these constitutional rights are respected.