Case Law Supporting Land Reconciliation
In the BCTC Process

Returning Lands to the Secwepemc under the BCTC Process

The legal framework in Canadian constitutional and Aboriginal law to support claims for why treaty negotiations matter, particularly in the context of reconciliation. The return of lands to the Secwepemc under the BCTC treaty process is grounded in constitutional law, Indigenous rights jurisprudence, and the political imperative to resolve outstanding title issues in British Columbia. Cases such as Calder, Guerin, Delgamuukw, and Tsilhqot'in inform the legal context for modern treaties by recognizing Aboriginal rights, title and clarifying the Crown's obligations. The need to return land is profound and a requirement for reconciliation. they enable self-government, cultural continuity, environmental stewardship, economic opportunity, and the building of respectful, cooperative relationships necessary to co-exist within the Canadian Society.

Introduction:

Treaty negotiations and returning lands to the Secwepemc through the British Columbia Treaty Commission (BCTC) process are grounded in legal recognition of Aboriginal title and rights, constitutional principles, and evolving jurisprudence in Canadian law. Absent historic treaties in most of British Columbia, unresolved questions of land ownership and jurisdiction remain central to Crown–Aboriginal relations. Unresolved land claims are a key driver of modern treaty-making processes and reflects enduring our interests in self-determination, cultural continuity, and legal recognition of title.

Legal Foundations of Aboriginal Title and Crown Obligations

The concept of Aboriginal title in Canadian law predates Confederation but was first formally recognized by the Supreme Court of Canada in ***Calder v. British Columbia (Attorney General) 1973.*** In Calder, the Court acknowledged that Aboriginal title existed prior to European settlement and was not merely a statutory right granted by colonial governments, even though the majority did not decide whether title remained unextinguished in that case. This acknowledgment laid the foundation for modern claims processes by affirming that Aboriginal title was a pre-existing legal interest in land recognized by common law.

Building on ***Calder, R. v. Guerin*** established that the Crown owes a fiduciary duty to Indigenous peoples in relation to land and that Aboriginal title rights are sui generis — unique in nature and deserving of special protection.

The landmark case ***Delgamuukw v. British Columbia*** further clarified that Aboriginal title is not simply a right to hunt or fish but a constitutionally protected right to the land itself. The Supreme Court held that title continues to exist in British Columbia and serves as a burden on Crown title; when the Crown contemplates

actions affecting lands subject to Aboriginal title or rights, it must consult and, where appropriate, accommodate the Indigenous nation.

Finally, in ***Tsilhqot'in Nation v. British Columbia***, the Supreme Court granted a declaration of Aboriginal title to a portion of traditional Tsilhqot'in territory, affirming that title includes the right to decide land use, exclusive occupation, and management of resources. This decision is the first in Canadian history to grant a specific territorial Aboriginal title outside of reserve lands and significantly influences how title claims are understood in British Columbia.

Underlying Interests in Returning Land:

At the core of the Secwepemc interest in land return are inherent rights and self-determination. Aboriginal title, as articulated in Delgamuukw and Tsilhqot'in, confers not just legal recognition but the substantive authority to govern territory, decide land use, and manage natural resources in accordance with Indigenous laws and traditions.

The Secwepemc never surrendered their traditional territories through treaty, meaning that much of their land remains unceded under Canadian law. The historic treaties creates legal and political uncertainty that modern treaty negotiations, facilitated by the BCTC, seek to resolve. Treaty processes therefore serve both as a formal recognition of title and as framework for establishing shared understandings of jurisdiction and governance over lands and resources.

Returning land to the Secwepemc is also integral to protecting cultural practices and ways of life that are inextricably linked to place. Land supports language, traditional governance, ceremonial practices, and environmental stewardship interests that court decisions like Delgamuukw recognize as central to Indigenous identity and rights.

Benefits of Land Return WLFN

- Under Self-determination and governance:

    - Land return under treaty strengthens our Secwepemc political authority and capacity to administer laws concerning land use, resource management, housing, and economic development.

    - Cultural and environmental protection: With treaty lands, Secwépemc governments can protect culturally significant sites and stewardship practices grounded in traditional ecological knowledge.

    - Treaty settlement lands, unlike Indian Act reserves, often include recognition of interests and economic opportunities that support business development, partnerships, and revenue generation.

Benefits for the Province and Canada

- Treaties provide legal certainty by defining ownership, jurisdiction, and legal relationships in ways that reduce litigation risk and clarify governance boundaries.

- Treaties provide clear understandings of land and resource management arrangements that promotes stable conditions for economic development and infrastructure planning.

- Treaties advances arrangements that is consistent with the spirit and letter of Section 35 of the Constitution Act, 1982, and aligns reconciliation principles as articulated in the Canadian Constitution and international obligations such as the UN Declaration on the Rights of Indigenous Peoples.