

Why B.C.'s premier approved the Musqueam Reconciliation Agreement

Premier Gordon Campbell's recent Musqueam Reconciliation Agreement involving the UBC golf course was legally unnecessary and politically unpopular. Why did he do it?

To answer this question, a good starting point is to recap the terms of the agreement. The Musqueam will receive \$20.3 million and four parcels of land in fee simple, and the province will get a release from three lawsuits launched by the band.

The four parcels of land are:

- the UBC golf course (146 acres to be transferred immediately, but to be operated as a golf course until 2083);
- Bridgepoint lands (17 acres in Richmond – this is the location of the River Rock Casino Resort, but the Great Canadian Gaming Corp. has exclusive use of the site until 2041 under the terms of a pre-paid lease);
- the Triangle lands (34 acres in Pacific Spirit Park, but on the other side of Southwest



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Marine Drive from the rest of the park);

■ Block F (21 acres in Pacific Spirit Park, but somewhat isolated from the rest of the park because the property is at the end of the golf course, and Musqueam have agreed that three acres of this land will be public park).

None of the land will become part of a reserve. The Triangle lands and Block F are valuable as prime development property.

The only obvious legal benefit to the province is that it ends three court actions. However, those court actions carried little economic risk to B.C.

The three court actions are:

- The UBC golf course case:

In March 2005, the B.C. Court of Appeal found the province did not adequately consult with the Musqueam concerning the transfer of the golf course to UBC. The province was directed to consult more with Musqueam.

■ The Bridgepoint lands case: In July 2005, the Supreme Court found the province did not adequately consult with the Musqueam before approving the relocation and expansion of a casino on the Bridgepoint lands. The province was directed to consult more, but Great Canadian's business was not to be affected.

■ The Celtic Shipyards case. The Musqueam acquired fee simple title to the Celtic Shipyards land on the edge of

Southlands in Vancouver in the 1980s. In April 2006, the Musqueam launched court action to be compensated for contamination on the site.

The timing of the bringing of that action (two decades after Musqueam bought the land) and the response of the province (no statement of defence was filed) suggests this was a strategic lawsuit to justify a better financial resolution in the ongoing consultation.

The Musqueam had not asked for any land in any of the cases. In the UBC golf course case, the Musqueam's position was that the province ought not to transfer the golf course, so it would be still be on the table when Musqueam and the Crown eventually got around to negotiating a treaty.

In the Bridgepoint lands case, the band wanted its own casino, and it didn't want River Rock as competition.

None of the judges who sent the province back to consult suggested that the province should transfer any

land to the Musqueam.

In the UBC golf course case, Justice **Peter Lowry** observed that it might be inappropriate for the Musqueam to receive any financial benefit as a result of

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the transfer of the golf course to UBC. Justice **John Hall** suggested that financial compensation for the Musqueam might be appropriate, assuming that UBC kept the golf course. Justice **Mary Southin** would have simply reversed the transfer and returned the golf course to provincial ownership.

From a lawyer's standpoint, the Musqueam Reconciliation Agreement was not a settlement of litigation. It was

an enormous grant of land and money justified by the settlement of three very weak economic claims.

It also had nothing to do with a treaty. Some might say the Musqueam might be further away from a treaty today than before this agreement. Some might say that it's not obvious why the Musqueam would proceed with a treaty when it appears enormous benefits are available outside of the treaty process if you sue the province.

So if Campbell did not have a legal obligation to enter into the agreement, and it was not part of a treaty and it was politically unpopular, why did he do it?

The answer would seem to be the new relationship with aboriginal people that Campbell has championed since early 2005.

In the Musqueam Reconciliation Agreement, Campbell has turned to the Musqueam and said "Trust me – let's find a solution that will settle the problems of the past and allow us to move forward together."

The ball is now in the Musqueam's court. ■

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