

Publisher's Note

2018 — Release 2

Previous release was 2018-1

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Macaulay

Aboriginal & Treaty Rights Practice

This release features updates to the case law and commentary in Chapters 1 (Parties), 2 (Pleadings), 4 (Summary Proceedings), 5 (Interlocutory Injunctions), 8 (Discovery), and 9 (Evidence).

Highlights

- **Interlocutory Injunctions — Balance of Convenience — Status Quo — Delay** — In *Council of the Haida Nation v. British Columbia (Forests, Lands, Natural Resource Operations and Rural Development)*, 2018 BCSC 1117, 2018 CarswellBC 1767 (G.C. Weatherill J.) the governing body of the Haida Nation brought an application for an interlocutory injunction to stay cutting permits issued to Husby Forest Products Ltd. to log trees on Haida Gwaii, B.C. The permits were issued by the District Manager over the strenuous objections of the Haida Nation on several bases, including that Husby had for several years engaged in overharvesting of the cedar resources and had failed to develop a cedar management strategy that aligned with the scope of the Chief Forester's expectations. A group of people had set up a camp and blockaded Husby from carrying out its operations, and Husby had obtained an injunction to

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end that blockade: *Husby Forest Products Ltd. v. Jane Doe*, 2018 BCSC 676, 2018 CarswellBC 994 (Basran J.).

- **Evidence — Expert Evidence — Joint Experts** — *Fletcher et al v. Ontario et al.*, 2016 ONSC 5874, 2016 CarswellOnt 21165, (sub nom. *Missanabie Cree First Nation v. Ontario*) [2017] 2 C.N.L.R. 117 (Lederer J.), concerns the Missanabie Cree First Nation's claim that a reserve should have been set aside for it under Treaty 9, but was not. While Canada acknowledged that a reserve should have been set aside, the issue was how to correct the error 110 years after the Treaty was made, and specifically, how big the reserve should be with reference to the Treaty formula based on the Band's population. At trial, only three witnesses were called, each one an historian, and each one retained by one of the three principal parties. The three historians worked independently of one another in the preparation of reports and reply reports. Thereafter, the Case Management Judge issued an order, on consent, that the parties were to arrange meetings which would include their respective experts for the purpose of coming to the most comprehensive Statement of Agreed Facts possible.