OSLER

Quality evidence and consent-based decision-making – Indigenous Law Insights June 2022 (webinar)

JUNE 28, 2022 2 MIN READ

Related Expertise

- Corporate and Commercial Disputes
- Environmental
- Government and Public Sector
- Mining and Natural Resources
- Regulatory, Indigenous and Environmental

Authors: W. David Rankin, Sean Sutherland, Isabelle Crew

The recent decision in *Reece v. Canada*, 2022 BCSC 865 demonstrates the importance of quality evidence in a case. British Columbia is also the first province to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* into law and the province recently entered into its first consent-based decision-making agreement under the law. The *Reece* case and the consent-based decision-making agreement were the main subjects of discussion during Osler's monthly Indigenous Law Insights webinar series, hosted by Isabelle Crew, associate, Litigation; Regulatory, Indigenous and Environmental; and with presentations by David Rankin, partner, Litigation; and Sean Sutherland, associate, Litigation.

In the *Reece* case, the Allied Tribe brought litigation after the province proposed a land transfer. A time limited injunction was granted to stop the transfer. At trial, the Allied Tribe provided expert testimony from an archeologist who demonstrated the Tribe's historical claim to the land. The province countered with testimony from a staff researcher. The Allied Tribe's presentation better conformed with the rules of the court in B.C. and was a persuasive factor in the court's decision.

The agreement between B.C. and the Tahltan Nation has set an important precedent as federal and provincial governments adopt legislation incorporating consent-based decision-making in the project assessment and approval process. Benefits of such agreements include advancing reconciliation and promoting collaboration with First Nations. However, such agreements may add another layer of uncertainty into the regulatory approvals process.

The next webinar in the series is September 27.

View the full June 2022 webinar