

Legal Counsel regarding Land Acknowledgment Statement

“...that is certainly both a complicated and controversial issue. I think the basis for the view that property ownership and municipality’s governance is at stake stems from a recent court decision out of British Columbia.

The case of Cowichan Tribes v. Canada dealt with a land claim by the Cowichan tribe relating to private land in Richmond, BC. The ruling was unique and surprising (scary) for people because it was the first time Aboriginal title was recognized over private lands. The Crown was ordered to negotiate with the Cowichan on reconciling their aboriginal title with the private property rights (homeowners throughout Richmond).

The Crown has appealed that decision, and other courts including in Nova Scotia have reached different decisions. Normally in those circumstances the land claims in relation to property where private fee simple ownership already exists have been dealt with through financial compensation. But at least in theory, this case gives rise to a fear that those claims could actually result in people losing their private property once aboriginal title is recognized over their land (in reality that is very unlikely and again even if the case were upheld is likely to result in negotiation and compensation).

I think the increased fear around land acknowledgements is that it could support such claims, and thereby put at risk their private property and the control of every level of government including municipalities over the lands in question.

One important distinction as it relates to lands in Alberta, however, is that they are already the subject of treaties. Claresholm is located in Treaty 7 territory. Treaty 7 includes a surrender of lands to the Crown; lands which include Claresholm. That is very different from BC where in the absence of those historical treaties there are continual arguments over what is claimed to be unceded land. So this issue tends to be of much more importance in BC than here.

The acknowledgement itself is unlikely to be legally binding, where your focus is on recognizing very generally the historical connection, and not any suggestion about their right to govern or continue to exert control over the lands. Having said that, I understand in the context of all those issues the discomfort with the final words “on whose territory we reside”. I note that earlier in the acknowledgement you refer to their “ancestral and traditional” territory, but here it simply calls it their territory. If that was carried forward, it might change the impression- saying “...and gratitude to those on whose ancestral territory we reside”. Or you could simply leave out the end and say “We provide this recognition as an act of reconciliation and gratitude.”

Again, it would be difficult to argue that this language itself creates any substantive legal risk for the Town for all the reasons set out above. But those types of changes could maintain the same meaning while perhaps addressing the key concern if there was a push to do so.”