

Duncan's First Nation v. Alberta: Infringement of treaty rights on the basis of cumulative effects of development on traditional territories September 2022 (webinar)

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The adoption by the courts of a more expansive view of treaty rights may lead to more successful treaty infringement claims in the future against the provinces. This was a key observation made during Osler's Indigenous Law Insights September webinar, with presenters Richard King, partner, Regulatory, Environmental, Indigenous and Land, and Erin Bower, associate, Litigation. The event was hosted by Marleigh Dick, associate, Litigation.

With the *Duncan's First Nation v. Alberta* case before the courts, Duncan is claiming that the province of Alberta has failed to uphold its obligations under Treaty 8 by authorizing development without regard to the cumulative effects and cumulative impacts on Duncan's treaty rights. Duncan claims that development has caused significant changes to the lands, waters and natural resources in Duncan's traditional territory.

This case mirrors *Yahey v. British Columbia* where the Blueberry River First Nations successfully claimed against the province for unjustifiable infringement of their Treaty 8 rights on the basis of cumulative effects of resource development in their traditional territory. In June 2021, the Court found that the province had infringed Blueberry's treaty rights by permitting cumulative impacts from industrial development to diminish Blueberry's ability to meaningfully exercise their treaty rights. A new regulatory framework is currently being negotiated to address the Court's findings in this case.

A successful claim in *Duncan's First Nation v. Alberta* would require a re-examination of regulatory processes governing land use and project approval to incorporate cumulative effects analysis.

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