# B.C. band wins landmark land claims case

**JUSTINE HUNTER**
GLOBE AND MAIL UPDATE
NOVEMBER 21, 2007 AT 3:04 PM EST

Victoria — The B.C. Supreme Court today found a native band in the province's central interior has established aboriginal title to a significant portion of their traditional territory, but stopped short of transferring ownership.

“The Court offers the opinion that Tsilhqot'in Aboriginal title does exist inside and outside the Claim Area,” wrote Justice David Vickers in a lengthy written decision. The lands he referred to make up close to half of the 440,000 hectares of lands that were claimed by the Xeni Gwet'in.

But, he added: “Rights that are recognized and affirmed are not absolute. Federal legislative powers continue (but) federal power must be reconciled with federal duty and the best way to achieve that reconciliation is to demand the justification of any government regulation that infringes upon or denies aboriginal rights.”

Mr. Justice Vickers also sent a pointed message to the provincial government, which has asserted its rights to manage Crown lands that make up the vast majority of B.C.

**Internet Links**

- Court decision (pdf)

“Land use planning and forestry activities have unjustifiably infringed Tsilhqot'in Aboriginal title and Tsilhqot'in Aboriginal rights,” he stated.

Jack Woodward, legal counsel for the band, welcomed the decision, calling it a major precedent despite the fact that Mr. Justice Vickers failed to make a formal declaration of title, based on technical issues.

The case, filed by Chief Roger William on behalf of the Xeni Gwet'in, began 17 years ago when the band sought to block a provincial government decision to allow logging in their traditional territory.

“The court has given us greater control of our lands,” Mr. William said in a statement.

“From now on, nobody will come into our territory to log or mine or explore for gas, without seeking our agreement.”

In his landmark decision, Mr. Justice Vickers put those provincial powers in doubt.

“Aboriginal title land is not ‘Crown land' as defined by provincial forestry legislation. The provincial Forest Act does not apply to Aboriginal title land. The jurisdiction to legislate with respect to Aboriginal title land lies with the Federal government… The Province has no jurisdiction to extinguish Aboriginal title and such title has not been extinguished by a conveyance of fee simple title.”

But after 339 days of trial in a case expected to cost taxpayers tens of millions of dollars, Mr. Justice Vickers sent governments and the band back to the negotiating table, saying it would not be appropriate for either side to appeal this decision.

“Throughout the course of the trial and over the long months of preparing this judgment, my consistent hope has been that, whatever the outcome, it would ultimately lead to an early and honourable reconciliation with Tsilhqot'in people,” he wrote.

“After a trial of this scope and duration, it would be tragic if reconciliation with Tsilhqot'in people were postponed through seemingly endless appeals. The time to reach an honourable resolution and reconciliation is with us today.”

The case was unusual in many respects. At the outset, Mr. Justice Vickers found the case was of sufficient public interest that he directed the federal and provincial governments to pick up a substantial portion of the plaintiff's costs.

As well, for five weeks in the winter of 2003, the court was transplanted in a classroom of the Naghataneqed Elementary School in the Nemiah Valley, in the heart of the band's claimed territory. The extraordinary change in venue allowed band elders to testify without the hardship of travelling to Victoria.

Recommend this article? 18 votes

View the most recommended

© Copyright 2007 CTVglobemedia Publishing Inc. All Rights Reserved. CTVglobemedia

globeandmail.com and The Globe and Mail are divisions of CTVglobemedia Publishing Inc., 444 Front St. W., Toronto, ON Canada M5V 2S9
Phillip Crawley, Publisher