

Globe British Columbia

NATIVE LAND CLAIMS

Band's anger over haying could kill chance of deal, restart costly court fight

BY JUSTINE HUNTER VICTORIA

A dispute over the right to cut some hay in a remote area of B.C.'s interior is threatening to reopen a massive native land-claims court battle.

B.C. forestry officials are set to decide as early as this week on an application to renew a grazing licence on lands that were recognized last November by the B.C. Supreme Court as the aboriginal territory of the Xenigwet'in.

The tenure review is an act of "obvious sabotage," according to the band's lawyer, and it could unravel months of careful negotiations aimed at keeping the matter from ending up back in the courts.

Premier Gordon Campbell is already under fire from aboriginal leaders who say he has not lived up to his promise to recognize aboriginal rights and title.

Although the forestry officials offered to consult with the band, the Xenigwet'in said the tenure issue shows the province is continuing to ignore their title.

"My client might want to give permission, but it's not the government's hay to give away at this point," said Jack Woodward, the lawyer for the band.

Mr. Woodward said the licence is just one example of how the provincial government is ignoring the court decision by Mr. Justice David Vickers and carrying on as if it is still in charge of the Crown lands in question.

Mike de Jong, Aboriginal Relations Minister, yesterday said he is seeking a meeting with the band's chief, Roger William, to try to settle the dispute.

"I'm perplexed and disappointed," Mr. de Jong said in an interview. "If a misunderstanding arises of the sort alluded to



My client might want to give permission, but it's not the government's hay to give away at this point.

Jack Woodward

here, it seems to be the logical thing would be to iron that out."

The setback comes just weeks after the provincial and federal governments agreed to hold off on their plans to appeal Judge Vickers' landmark ruling that declared the Xenigwet'in had established aboriginal title to a large portion of their traditional territory.

Now the band has served notice that it is backing out of that agreement, paving the way for another costly round of legal battles.

"B.C. is quite aware that the [hay tenure] location is squarely within the area where aboriginal title has been proven," Mr. Woodward wrote in a formal 30-day notice to terminate the truce. "The province makes no apology for disregarding the decision of Vickers or for this obvious sabotage of any meaningful good faith negotiations."

The band was told of the tenure renewal application in December, a month after they declared control over roughly 200,000 hectares of land in the remote Nemiah Valley in B.C.'s central interior.

The band's land-claims trial lasted 339 days and cost taxpayers tens of millions of dollars, prompting the presiding judge to urge all parties to avoid further litigation.

» SEE 'LAND CLAIMS' PAGE 2

FROM PAGE 1
» LAND CLAIMS

Minister asks to meet chief

» In his 473-page decision, Judge Vickers framed his ruling as an opinion and ordered the three parties – B.C., Ottawa and the band – to negotiate the details.

"After a trial of this scope and duration, it would be tragic if reconciliation ... were postponed through seemingly endless appeals," he wrote.

Both the provincial and federal governments said they want to continue negotiations but could not resolve the tenure question by the Feb. 6 deadline imposed by the band.

The unusual wording of the judge's ruling, framing it as an opinion rather than a finding in law, has left the parties in a kind of limbo. The band takes the position that they are in control of the lands, while the Crown says there is nothing binding in the decision.

Mr. de Jong said he still believes the matter is best resolved in negotiations and he has written to the chief seeking another meeting.

"I'm not at all hesitant to try to work through that, but if at the first instance of any dispute, the response of counsel is to abandon the agreement and rush back to court, then it's going to be a very short discussion."