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## William case appeal begins Nov. 15

By [Erin Hitchcock - Williams Lake Tribune](#)Published: **October 21, 2010 8:00 AM**

The BC Court of Appeal will hear appeals on the Xenigwet'in rights and title case from the Tsilhqot'in Nation and the provincial and federal governments in Vancouver Nov. 15.

In November 2007, after 15 years before the courts, Justice David Vickers found that Tsilhqot'in chief Roger William had proven aboriginal title to a vast area around the Nemiah trap line.

Justice Vickers said William had proven title to about half of the claim area, but stopped short of declaring aboriginal title, instead encouraging all parties to sit down and negotiate as an alternative to further court proceedings.

The Tsilhqot'in National Government's lawyer, Jay Nelson of Woodward and Company, says no negotiations have occurred.

"There's a wide range of issues, but it boils down to basically the Tsilhqot'in are appealing his decision not to grant title to at least the area where he found it was proved and is also arguing he should have found title to all of the claim area, which would include the (Prosperity) mine site," Nelson says.



Former Xenigwet'in Chief Roger William holds a plaque he received honouring his leadership and dedication during a victory celebration for the William Case in November 2008. Appeals on the 2007 decision will be heard at the BC Court of Appeal on Nov. 15.

Tribune file photo

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just a portion of it.”

Nelson says B.C. and Canada both take the position that Vickers was correct not to grant a declaration of title. He says Canada is arguing that the Tsilhqot'in Nation shouldn't have been given the opportunity to come back to the courts and argue title for other areas within the claim area.

He says B.C.'s argument relates to aboriginal trapping rights.

“They're arguing that the judge erred by finding the Tsilhqot'in have a trading right, the aboriginal right to trade for moderate livelihood,” Nelson says, adding the parties have been given three weeks to present their appeals.

How the appeal will affect the Prosperity mine issue is unknown.

The mine has already received the green light from the provincial government, but the federal government has yet to make a decision.

Nelson says the appeal creates “a substantial amount of uncertainty” around the project's future, even if the federal government approves the mine.

“I think it's a fair to say that the exact consequences of a declaration of aboriginal title remain unknown because it hasn't happened yet,” Nelson says.

He says Woodward and Company plans to argue that the province has no authority to authorize development on aboriginal title lands and that it's up to the Tsilhqot'in as to how the lands will be used.

“Our position would be it would negate any provincial authorization, whether they've been issued before or after the decision itself,” he says, noting that what effect a declaration of title would have is unknown and is an issue that would be debated during appeals.

It's also not known how long it would take for the BC Court of Appeal to make a decision. Nelson expects, however, that it could take six months to a year, or possibly longer, before a decision is made.

No one from the Attorney General's office was able to comment on the appeals.

Xeni Gwet'in Chief Marilyn Baptiste emphasizes the Tsilhqot'ins haven't ceded their aboriginal rights.

“We have not ceded, we have not surrendered our land, our rights, or our title, our lands, our water, our fish,” Baptiste says. “Our future generations, our way of life, are not for sale.”

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