



**WOODWARD
& COMPANY**

TELEPHONE (250) 383-2356
FACSIMILE (250) 380-6560
RECEPTION@WOODWARDANDCOMPANY.COM
SECOND FLOOR • 844 COURTNEY STREET
VICTORIA BRITISH COLUMBIA • V8W 1C4

**Jack Woodward • Patricia Hutchings LL.M. • Barbara Yates, Q.C.
David M. Robbins • Gary S. Campo • Heather Mahony • Krista Robertson
Alana DeGrave • J. Berry Hykin • Drew Mildon • Leah Mack
Associate Counsel: Murray Browne • Eamon Murphy • Graham Reed**

Press Release - Communiqué

Decision Reached in Historical Land Claim Case: *Tsilhqot'in Nation v. British Columbia, 2007 BCSC 1700*

Victoria, British Columbia, November 21, 2007 - After a courageous and epic struggle, a small Tsilhqot'in First Nation that took on the governments of Canada and British Columbia to protect their land and way of life has been victorious in Court. In a major precedent-setting decision, Justice David Vickers of the British Columbia Supreme Court ruled today that the Tsilhqot'in (Chilcotin) people have proven Aboriginal title to approximately 200,000 square hectares in and around the remote Nemiah Valley, south and west of Williams Lake, British Columbia. Although Justice Vickers declined to make a declaration of title based on technical issues, he found that the tests for evidence of title were met in almost half the area claimed.

Throughout Canada and the United States, governments made treaties with First Nations to purchase their lands. But this did not happen in most of British Columbia. The provincial and federal governments have repeatedly denied the existence of the homelands of First Nations in this province. This denial, coupled with the horrors of the residential school experience and attempts at forced assimilation, have resulted in a legacy of social illness and dislocation in First Nations communities. The United Nations has stressed that the recognition of land rights is a necessary first step in developing effective economic and social frameworks for self-determination.

"The court has given us greater control of our lands. From now on, nobody will come into our territory to log or mine or explore for oil and gas, without seeking our agreement," said the Plaintiff, Chief Roger William. "The court recognized that we have proven title in about half of the Claim Area - and from today we accept our renewed responsibility and powers of ownership of those lands."

Justice Vickers made a number of important findings that will impact future relations between the governments of Canada and British Columbia and First Nations, including:

1. The Tsilhqot'in people have aboriginal rights, including the right to trade furs to obtain a moderate livelihood, throughout the Claim Area.
2. British Columbia's *Forest Act* does not apply within Aboriginal title lands.
3. British Columbia's has infringed the Aboriginal rights and title of the Tsilhqot'in people, and has no justification for doing so.
4. Canada's Parliament has unacceptably denied and avoided its constitutional responsibility to protect aboriginal lands and Aboriginal rights, pursuant to s. 91(24) of the Constitution of Canada.
5. British Columbia has apparently been violating Aboriginal title in an unconstitutional and therefore illegal fashion ever since it joined Canada in 1871.

The trial itself lasted 339 days, during which 29 Tsilhqot'in witnesses gave evidence, many in their native language. 19 non-Tsilhqot'in experts also gave evidence on the Plaintiffs' behalf. The documentary evidence was voluminous. 604 exhibits were entered – Exhibit 156 alone contained over 1,000 historical documents; exhibit 0250 contained 150-200 historical maps; and, exhibit 0450 comprised 58 volumes containing 3,000-4,000 documents. In addition, the Judge received about 7,000 pages of written submissions from the lawyers on all sides.

Facts and Figures

Area Claimed (within the traditional territory of the Xenigwet'in):	438,100 hectares
Area where Aboriginal title proven:	Approximately 200,000 hectares
Area where Aboriginal rights declared:	438,100 hectares
Total days of trial:	339
In Victoria:	325
In the Nemiah Valley:	14
Depth of snow during trial in the Nemiah Valley:	2 feet
Courtroom used in the Nemiah Valley:	A classroom in the Natanaqed Elementary School
Most unusual feature of the trial:	Night-time sittings in Victoria, where elders could tell sacred stories that can only be recounted after dark

Days prior to trial when Chief Roger William was subject to cross-examination by the Crown lawyers in examination for discovery:	28
Number of questions asked of Chief Roger William by the Crown lawyers during Discovery:	11, 042
Number of answers given by Chief Roger William used by the Crown during the case:	0
Number of days Chief Roger William was on the stand giving testimony during the trial:	46
Most unusual physical exhibit entered in evidence during the trial:	A gwezinh, a specialized tool for digging mountain potatoes, a plant harvested by the Tsilhqot'in people.
Total pages of written submissions given to the judge to read:	7,000
Number of pre-trial motions advanced by Canada and B.C. to try to terminate the case on technicalities without a trial:	10

The Cost of Justice

The reason it has taken so long for a First Nation to achieve justice is the embarrassing fact that our legal system is too expensive for most First Nations to get their claims to court. The governments of Canada and British Columbia have unlimited resources to fight these cases with as many lawyers as it takes to derail and discourage such litigation. In this case, British Columbia relied not only on a staff of lawyers in the Attorney General's department, but also hired one of Canada's largest law firms, Borden Ladner Gervais. On most court days, the province was paying for lawyers from both firms to be in court and to be working behind the scenes.

Canada was represented by the Department of Justice. Neither Canada nor B.C. has revealed how much they have spent fighting this case. The Xeni Gwet'in are open about their legal costs. The Band has no money of its own, so the case was originally funded by donations from the Assembly of First Nations, the David Suzuki Foundation and the Western Canada Wilderness

Committee. Because of the aggressive defence mounted by Canada and B.C., those funds soon ran out. The Band then made a very unusual application to the court – asking that Canada and B.C. be made to pay for the Band's lawyers to the end of the trial. The Court agreed¹ in a ruling that was upheld by the B.C. Court of Appeal² and the Supreme Court of Canada.³

Funding from the government was at the rate of 50%, meaning that the Band's lawyers have been working for 50% of the court-regulated hourly rates. Presumably the government lawyers were all paid at full rates (100%), but that information has not as yet been made available by either Canada or B.C.

-30-

For further information (media inquiries), contact:

Woodward & Company
Telephone: 250-383-2356
Email: reception@woodwardandcompany.com

www.woodwardandcompany.com

¹ *Xeni Gwet'in First Nations v. British Columbia*, 2001 BCSC 1641.

² *Xeni Gwet'in First Nations v. British Columbia*, 2002 BCCA 434.

³ *Xeni Gwet'in First Nations v. British Columbia*, 2004 CarswellBC 633.