

BY RICHARD WOODBURY

HISTORICAL TSILHQOT'IN

WHAT THE COURT DECISION REALLY MEANS FOR FIRST NATIONS PEOPLE



When the Supreme Court of Canada granted declaration of Aboriginal title to the Tsilhqot'in First Nation for more than 1,700 square kilometres of British Columbia land in June 2014, the decision was viewed as empowering for First Nations people.

While hailed as an historic decision, the ruling can be viewed as part of a growing recognition of First Nations rights and title. "I think the decision is really a continuation of a series of Supreme Court decisions that have pretty consistently strengthened the case for Aboriginal rights and title," says Chuck Strahl, the director and chairman of the Manning Centre for Building Democracy, and a former federal Minister of Indian Affairs and Northern Development.

Strahl says previous rulings have consistently said both governments and industry have a duty to consult with First Nations groups about potential projects and that the projects must take into account both the traditional and economic uses of the land.

The unanimous 8-0 Tsilhqot'in Supreme Court decision has future implications for economic and resource development on First Nations lands. To understand these implications, one has to look at the wording of the ruling, which said Aboriginal title confers ownership rights including "the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to proactively use and manage

the land," as well as the "right to control the land."

"Those are the seminal phrases that allow, empower and recharge First Nations in how to develop that resource in the way they see fit and that's the exciting aspect of that clause, quite frankly, because... it says First Nations have the right to make laws and have power over the jurisdiction of those resources," says Wayne Garnons-Williams, the senior lawyer and principal director with Ottawa-based Garwill Law Professional Corporation, a firm noted for its expertise in Aboriginal law.

Garnons-Williams says the three main implications of the Tsilhqot'in decision on Aboriginal-industry economic partnerships are:

- 1 Greater security for First Nations in future ownership and control of traditional lands and resources.
- 2 As a result of this greater security in future ownership, there will be a greater understanding by the outside business community that they will be talking and negotiating directly and primarily with First Nations. (At best, the federal government and provinces will be viewed as secondary players.)
- 3 The environmental standards as interpreted by First Nations laws and philosophies will serve as the requirements for long-term stewardship of the land and resources. For businesses to have harmonious long-term business relations with First Nations groups, they will need to meet these standards and apply the host First Nations' philosophies about resource stewardship.

Independent of the Supreme Court's decision (and the second implication mentioned above), there has widely been a recognition in recent times that "From the earliest moments, people that want to do business in these First Nations territories need to involve Aboriginal people as early as possible" in a project's planning stages, says Strahl.

Communication is the key ingredient to building strong Aboriginal-industry economic partnerships. Industry will need to communicate early and often with First Nations groups and develop its plans with them.

Using a hypothetical example, Strahl says if a business approaches a First Nations group and says it has designed something like a new logging plant or mill with plans to locate it on their territory and offers them a deal, this is the wrong approach. The First Nations group should have been consulted from square one.

Roger William is the chief of the Tsilhqot'in Nation. He was also the appellant in the Tsilhqot'in decision, which is why the case is often referred to as the William's Case. William says that as part of developing a plan, the environment must be made a priority and points specifically to concerns

about water, wildlife and fish. "These things are so important to us," he says.

Addressing concerns such as these will be a prerequisite to doing business because the Supreme Court decision indicated incursion on title land is only permitted with the consent of the Indigenous nation or group, or if it is justified by a compelling and substantial public purpose. "At the end of the day, if there's a problem, then those industries won't be able to work with us," says William.

As well, the economic component of the project must be beneficial for the First Nations group. As part of that, an agreement might include things such as part ownership of the project, and job and contracting opportunities for residents.

When establishing a business relationship, industry will need to realize the needs and working methods of each First Nations group will be different. Industry should not assume that because it has done business with one

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First Nations group before, the same approach should be followed this time around. "That's one of the common mistakes," says Strahl.

Building strong Aboriginal-industry economic partnerships will require a relationship built on a foundation of trust, understanding and cooperation.

"It's time for industries to take a step back and listen and educate them-

selves, so that they can be a player in the development of those resources and the development of wealth for the First Nation and the investors coming in," says Garnons-Williams.

He says non-Aboriginal industry needs to understand the First Nations laws and philosophies that have existed, and continue to exist and be applied, in the First Nations' traditional territory.

As part of this, industry will need to be patient and take the time to understand, respect and apply these things in how they conduct business.

As well, non-Aboriginal industries need to grasp Indigenous concepts such as watershed management, the interconnectedness of living things, and how to ensure that the seventh generation is not negatively impacted by the economic/industrial decisions of today, says Garnons-Williams.

"It's no longer just the exploitation of the resource. It's the long-term relationship with not only the First Nation, but the land. It's an entirely different concept industries have to come to grips with – the fact that it's not just a come in, come out, get in get out [approach], it's an interconnectedness that one has to respect," says Garnons-Williams.

Michael Woods, a partner with Woods LaFortune LLP, an international trade law firm based in Ottawa, says Aboriginal-industry economic partnerships will have a "deeper, more rich concept of investment" than industry may have been exposed to in the past. Not only will they be partners in an economic and business sense, they will be real partners in their people-to-people relationships.

Garnons-Williams predicts First Nations across the country will eventually be declared the owners of the lands and resources in their respective territories. The Tsilhqot'in decision is a major first step in that direction. "Now that the Tsilhqot'in decision has begun the process of recognizing Aboriginal ownership in land and resources, the non-Aboriginal business community interested in partnering with First Nations has the opportunity to pay less attention to what the province and federal government have to say about economic development on Aboriginal lands, and to listen more to the real "first stewards" of the Aboriginal land and resources," says Garnons-Williams. ■

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