

Some B.C. First Nations hail court case while others celebrate treaty

2 hours ago

VICTORIA - The dividing line between B.C. aboriginal groups on how to fight for their historic rights couldn't have been more clearly defined than by two events Wednesday.

Six First Nations from the central B.C. Interior hailed the end of a 17-year legal fight as a victory for aboriginal rights, title and control of native territory.

Meanwhile, leaders of five Vancouver Island First Nations stubbornly defended their decision to sign a treaty rather than continue their battles through the courts.

"We're very happy that we've chosen this path," said Toquot Chief Robert Dennis, one of five Maa-nulth elders taking part in a treaty ceremony at the legislature.

"There's a court decision out there and that's the route that First Nation has taken," said Dennis, referring to a massive B.C. Supreme Court decision covering claims by the Tsilhqot'in bands in the province's Cariboo-Chilcotin region.

"We've take the path of negotiating a treaty and we're happy and absolutely nothing will put a damper on that," said Dennis.

The 485-page decision by Justice David Vickers ruled aboriginal title does exist inside and outside a large area claimed by the Tsilhqot'in.

Tsilhqot'in Chief Roger William, holding an animal-skin drum, said his people have always considered the land in question as their own and he believes the court ruling upholds that belief.

"Nothing is going to happen in this area without our approval," he told reporters in the Tsilhqot'in's lawyer's office.

An ancient mistrust lay at the heart of the decision to go to court, said Joe Alphonse, the band's director of government services.

In the 1860s, six Chilcotin chiefs were hanged in Quesnel, B.C., after being invited to peace talks.

"We've been at the treaty table. It cost us dearly," he said. "It cost us six war chiefs in 1864."

The court ruling was released about an hour before hundreds of members of the Maanulth paraded to the legislature for a ceremony marking the introduction of legislation to ratify their treaty, the second one completed under the B.C. treaty process started in the early 1990s.

"This is a milestone in reconciliation, recognition and accommodation," B.C. Premier Gordon Campbell told members of the Ucluelet, Toquaht, Uchucklesaht, Kyuquot and Huu-ay-aht First Nations.

It's a deal that will see the five bands' 2,000 members share \$73.1 million, annual resource royalty payments averaging \$1.2 million for 25 years and a land transfer of approximately 245 square kilometres.

Five chiefs were invited to address the house from the door of the chamber minutes after the bill was tabled.

Uchucklesaht Chief Charlie Cootes told the MLAs the treaty, the result of negotiation that began in 1994, will free his people from the historic burden of bureaucracy and reclaim their historic right to govern themselves.

But the ceremony and speeches stood in some contrast to the court ruling.

The Tsilhqot'in bands' trial started in November 2002, took 339 days to complete and looked back at 200 years of native history.

It cost the federal and provincial governments almost \$30 million in legal costs after the judge ruled they must also pay the First Nations' legal fees.

"The province has no jurisdiction to extinguish aboriginal title," Vickers wrote.

He ruled the group has the right to hunt and trap birds and animals throughout the 2,000-square-kilometre claim area and that the Tsilhqot'in can capture and use wild horses for transportation and work.

"These rights have been continuous since pre-contact time which the court determines was 1793," Vickers wrote.

Jack Woodward, a lawyer for the Tsilhqot'in, said the decision on aboriginal rights is unprecedented.

"It gives an outstanding amount of power to the First Nation to control their own territory," he said.

The ruling is a "very clear road not only for Chilcotin people but other aboriginal people," Woodward said.

The government played down Vickers' ruling, which will likely be appealed, saying it is not binding and should instead be seen as a basis for negotiating land use and other aboriginal rights.

Campbell said the Maa-nulth treaty and the Tsawwassen deal ratified earlier this month by the legislature are about self-determination and putting people in charge of their own destiny.

"Clearly with the (Tsilhqot'in) decision, I think it's a 400-page document that says we should negotiate," Campbell said at a news conference after tabling the Maa-nulth treaty legislation.

"(It) is a pretty strong message about negotiation and we see the results of that here today.

"It's pretty clear from that judgment that negotiation is the route to a future that's full of hope for First Nations people across the province."

Dennis said the Maa-nulth had collectively looked at the litigation route and decided against it.

"Millions and millions of dollars to go to court, probably appeal after appeal after appeal," he said, adding that was when they turned to the treaty process.

"We looked at the opportunities it brought. It brought us more revenue, it brought us more governance, it brought us more land and it brought us an allocation to more resources."

Campbell noted the Tsilhqot'in's court fight cost \$29 million "and frankly doesn't resolve very much.

"This (the treaty) is something that resolves things, moves them forward and gives First Nations an opportunity to chose for themselves."

Campbell said he is confident the B.C. legislature will quickly ratify the treaty and it will move on to the House of Commons for a final vote in the near future.

The Tsilhqot'in's lawyer said the court instructed the B.C. government to manage the territory to preserve the resources necessary for the natives to exercise their rights.

"The court found that clearcut logging harms (native hunting), and the province cannot carry on with plans to clearcut log because that would unjustifiably infringe on that right," said Woodward.

The judge wrote that British Columbia's forestry activities in the area infringe on the Tsilhqot'in title.

"A legislative scheme that manages solely for timber ... faces a formidable challenge when called upon to balance aboriginal rights with economic interests of the larger society." Vickers ruled.

The judgment was praised by other aboriginal groups in the B.C. interior. The hereditary chiefs of the Wet'suwet'en Nation offered congratulations for what they see as a massive victory in the courts for all First Nations.

Hereditary chief Kloum Kuhn also called it an important addition to the precedent set by the 1997 Delgamuukw decision, which he said confirmed the Wet'suwet'en's traditional rights to their territory and established a three-part test for proving aboriginal title.

Wednesday's decision was the first time that test for title had been successfully applied, he said.

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