

# **Tsilhqot'in First Nation granted B.C. title claim in Supreme Court ruling**

Source: CBC News

The Supreme Court of Canada has granted declaration of aboriginal title to more than 1,700 square kilometres of land in British Columbia to the Tsilhqot'in First Nation, the first time the court has made such a ruling regarding aboriginal land.

The unanimous 8-0 decision released Thursday resolves many important legal questions, such as how to determine aboriginal title and whether provincial laws apply to those lands. It will apply wherever there are outstanding land claims.

The decision, written by Chief Justice Beverley McLachlin, also has implications for future economic or resource development on First Nations lands.

'It only took 150 years, but we look forward to a much brighter future. This without question will establish a solid platform for genuine reconciliation to take place in British Columbia.'— *Grand Chief Stewart Phillip, president of Union of B.C. Indian Chiefs*

The case focused on the Tsilhqot'in First Nation's claim to aboriginal title over 440,000 hectares of land to the south and west of Williams Lake in the B.C. Interior.

A B.C. Court of Appeal ruling in 2012 gave the Tsilhqot'in sweeping rights to hunt, trap and trade in its traditional territory. But the Court of Appeal agreed with the federal and provincial governments that the Tsilhqot'in must identify specific sites where its people once lived, rather than assert a claim over a broad area.

The Tsilhqot'in, a collection of six aboriginal bands that include about 3,000 people, argued the court's decision failed to recognize the way its people had lived for centuries.

The court heard the Tsilhqot'in people were "semi-nomadic," with few permanent encampments, even though they saw the area as their own and protected it from outsiders.

## **Establishes meaning of title**

In its decision, Canada's top court agreed that a semi-nomadic tribe can claim land title even if it uses it only some of the time, and set out a three-point test to determine land titles, considering:

- ⌚ Occupation.
- ⌚ Continuity of habitation on the land.



⌚ Exclusivity in area.

The Supreme Court of Canada has recognized the Tsilhqot'in First Nation's aboriginal title over a wide area to the south and west of B.C.'s Williams Lake, which it considers its traditional

territory. (CBC)

The court also established what title means, including the right to the benefits associated with the land and the right to use it, enjoy it and profit from it.

However, the court declared that title is not absolute, meaning economic development can still proceed on land where title is established as long as one of two conditions is met:

- ⌚ Economic development on land where title is established has the consent of the First Nation.
- ⌚ Failing that, the government must make the case that development is pressing and substantial, and meet its fiduciary duty to the aboriginal group.

In other words, the decision places a greater burden on governments to justify economic development on aboriginal land.

The court also makes it clear that provincial law still applies to land over which aboriginal title has been declared, subject to constitutional limits.

## 'Absolutely electrifying'

Grand Chief Stewart Phillip, president of the Union of B.C. Indian Chiefs, was with Chief Roger William, who brought the case, and other Tsilhqot'in chiefs when they learned of the top court's decision, and said the mood in the room was "absolutely electrifying."

"We all heard the decision at the same moment, and the room just erupted in cheers and tears. Everybody is absolutely jubilant. It's very emotional," Phillip told CBC News.



Grand Chief Stewart Phillip of the Union of B.C. Indian Chiefs smiles during a news conference in Vancouver, after the Supreme Court ruled in favour of the Tsilhqot'in First Nation, granting it land title to 438,000 hectares of land. (Darryl Dyck/Canadian Press)

"It only took 150 years, but we look forward to a much brighter future. This, without question, will establish a solid platform for genuine reconciliation to take place in British Columbia.

"I didn't think it would be so definitive," Phillip added. "I was actually prepared for something much less. It's not very often that I'm without words, and I'm quite overwhelmed at the moment."

## **Future pipelines?**

Aboriginal Affairs Minister Bernard Valcourt said in a statement Thursday that the government will review the "complex and significant issues" in the decision.

"Our government believes that the best way to resolve outstanding aboriginal rights and title claims is through negotiated settlements that balance the interests of all Canadians," Valcourt said in the statement, adding that the government has concluded four treaties in B.C. since 2006, with others under negotiation.

NDP critic Jean Crowder welcomed the ruling and said the governments at both levels have for too long taken the chance that aboriginal title would never be recognized in going ahead with development.

"Now, all levels of government will need to stop and consider whether or not they've met the duty to consult or justified an infringement. Governments will have to meet this obligation so development can continue, with First Nations determining how to use the land, not third-parties, to the benefit of many Canadians," Crowder said in a statement.

Liberal Leader Justin Trudeau said in a post on Twitter, "We remain committed to partnering with aboriginal communities, based on inherent & treaty rights, to build a better future for all Canadians."

B.C. Attorney General and Justice Minister Suzanne Anton said today's decision "provides additional certainty around processes and tests that are applied to the relationship between the province and aboriginal peoples."

What today's ruling will mean for future pipelines is unclear, but one expert said it's likely this decision will be used by First Nations fighting the Enbridge pipeline in court.

"The pipeline is going through many, many First Nations who have already declared that they do not want the Enbridge pipeline going through their territories, and this decision strengthens their rights to preserve their traditional territories," said Antonia Mills, a First Nations studies professor at the University of Northern B.C.