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Tsilhqot'in victory bolsters First Nations across country

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Abstract:

"Tsilhqot'in people since then have still been fighting for what they believe in, and have been fighting for their land and rights because of those chiefs' courage, strength and vision," [Percy Guichon] said. "I'm so thankful and grateful to say that, 150 years later, we see the Supreme Court of Canada's decision today as the final justice for our six chiefs who died for our land, way of life, and the future of the Tsilhqot'in."

Former treaty negotiator, First Nations consultant and author of *Resource Rulers: Fortune & Folly on Canada's Road to Resources* told *Windspeaker* that [Beverly McLachlin]'s 80-page ruling is a skilfully crafted "legal masterpiece"-but not one that surprised him, given that it's only the latest in a long string of Aboriginal court victories, in which he calculates nine-in-ten have been wins.

"The Government of Canada is now taking time to review the Court's decision to determine next steps," the statement continued. "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."

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Full text:

VANCOUVER

When B.C. First Nations formally launched a series of nine long-promised constitutional challenges to the federally approved Enbridge Northern Gateway on July 14, they cited one single court case over and over. If anything, it bolsters the argument that the Supreme Court of Canada's unanimous 80-0 on the decades-old Tsilhqot'in nation lawsuit on June 26 truly was as groundbreaking as many had claimed. The ruling reverberated not only amongst elected Canadian and First Nations leaders, but also amongst resource-based businesses anxious over how the decision might impact their projects.

"This is not merely a right of first refusal with respect to Crown land management or usage plans," Chief Justice Beverly McLachlin stated in her ruling. "Rather, it is a right to proactively use and manage the land."

McLachlin and her fellow Supreme Court justices confirmed the Tsilhqot'in's legal title to 1,700 square kilometres - or 440,000 hectares - of their traditional hunting and trapping territories, rejecting what many had decried was a "postage stamp" approach to land title and rights that only considered the scattered patchwork of the postcolonization reserve system.

Instead, the country's highest court ruled, Aboriginal claims to territory extended far beyond their reserves. It was something long argued by Indigenous advocates and lawyers, but never settled formally in the courts.

"We're celebrating right now," said Roger William, who launched the case in 1983 after the provincial government issued a forestry permit to an area of the Tsilhqot'in nation's traditional territories. The challenge worked its way through the court system, but with previous cases never definitively answering the simmering questions around what title Indigenous people have to areas outside their modern reserves, but within their original land-base.

"This decision is such a huge, most important decision that I've been a part of," William added at a press conference at the Union of B.C. Indian Chiefs' Vancouver office.

However, although the ruling requires governments to now justify any economic activity on traditional territories, it doesn't offer First Nations an absolute veto over development. Even when a focal band refuses to consent to a project, Canadian authorities can over-ride their wishes if the proposed development is deemed to be

pressing and economically crucial.

It requires First Nations to prove they hold title to traditional lands, and declares that the basis for that title - even for nations determined to be "semi-nomadic" across those territories - requires exclusive use and occupation of the area, as well as a history of continuous habitation there.

The roots of the court victory stretched back decades earlier, to the government's hanging of six chiefs following the 1864 Chilcotin War, explained Chief Percy Guichon, whose Tsi Del Del First Nation is one of six members of the Tsilhqot'in National Government.

"Tsilhqot'in people since then have still been fighting for what they believe in, and have been fighting for their land and rights because of those chiefs' courage, strength and vision," Guichon said. "I'm so thankful and grateful to say that, 150 years later, we see the Supreme Court of Canada's decision today as the final justice for our six chiefs who died for our land, way of life, and the future of the Tsilhqot'in."

The ruling was seen as a slap in the face for the province, concluding that the government at the time had "breached its duty to consult" First Nations who would be affected by resource extraction industries on their land.

"Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group," McLachlin ruled.

Former treaty negotiator, First Nations consultant and author of *Resource Rulers: Fortune & Folly on Canada's Road to Resources* told *Windspeaker* that McLachlin's 80-page ruling is a skilfully crafted "legal masterpiece"- but not one that surprised him, given that it's only the latest in a long string of Aboriginal court victories, in which he calculates nine-in-ten have been wins.

"This is a major, major turn of events that is going to force a lot of people I now call 'deniers' into facing the new reality in B.C.," Bill Gallagher said. "First Nations are now enjoying the climax of Native empowerment.

"Governments and industries seeking to use the land must obtain the consent of the Aboriginal title-holders ... (But) this is just the natural progression as to how the law is evolving, and not a big quantum leap."

Aboriginal Affairs Minister Bernard Valcourt released a statement following the ruling describing the case as involving "complex and significant legal issues concerning the nature of Aboriginal title in the Province of British Columbia.

"The Government of Canada is now taking time to review the Court's decision to determine next steps," the statement continued. "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."

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