

Natives win land rights in B.C.

Ownership not included

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VANCOUVER — The Gitksan and Wet'suwet'en Indians yesterday won an important victory with a court ruling that they have a valid claim to rights over a massive chunk of land in northwestern British Columbia.

However, the British Columbia Court of Appeal said their rights do not include ownership of the more than 58,000 square kilometres of land. The natives had been seeking ownership of the land and jurisdiction over its resources, including forestry, fishing, mining and water rights.

Mr. Justice Alan MacFarlane said it was futile to try to characterize aboriginal rights as proprietary or non-proprietary.

"In the end, the aboriginal interest is a right of use and occupation of a special nature," he said.

The five-member court split 3-2 on the question of ownership and jurisdiction of the claim territory, with the minority supporting the natives' claim to proprietary rights, said Stuart Rush, lawyer for the Gitksan and Wet'suwet'en.

He said the exact nature of the natives' right to the land remains to be defined in negotiations.

But native leaders and their legal counsel were enthusiastic about what they described as an undiluted victory over the federal government's and B.C. Supreme Court's view that all native rights had been extinguished before Confederation.

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"Extinguishment, the wicked witch, is dead now," said Tlaz'ten Chief Edward John, a spokesman for the B.C. First Nations Summit. He said the ruling would strengthen the hand of aboriginal groups in British Columbia immeasurably in coming land-claim negotiations.



For the Gitksan and Wet'suwet'en, the ruling means that further court cases are needed to define the impact of existing forestry and mining activities on their rights. Yesterday's decision will almost certainly be appealed to the Supreme Court of Canada.

Although under the appeal court's ruling the Indians could not sell the land, it does mean they have pre-existing rights over the area in question. The court ruled that the Gitksan have "unextinguished non-exclusive aboriginal rights" to much of the territory they claim.

"We won on the extinguishment question," Herb George, speaker for the Gitksan and Wet'suwet'en chiefs, told reporters.

But the court stopped well short of accepting the natives' claim of ownership of the land, describing their rights as non-proprietary. The origi-

nal claim was for an area about the size of Nova Scotia.

The B.C. Supreme Court had ruled two years ago that all aboriginal rights had been extinguished in British Columbia under colonial law, although it recognized the right of the natives to traditional uses of unoccupied Crown land.

Since that decision, the New Democratic Party has come into power in the province, and has replaced the government's lawyer and abandoned the hard-line stand that had been adopted by the previous Social Credit administration.

Bryan Williams, counsel for the province, which was the main defendant, said he was pleased with the outcome and thought it was consistent with the government's new position, which does not argue that blanket extinguishment of native rights occurred before Confederation.

A B.C. Aboriginal Affairs Minister Andrew Petter said the ruling will not hinder the government's efforts to negotiate land claims.

"Today's court decision is a strong affirmation and support for our commitment to resolving aboriginal issues through consultation and negotiation," Mr. Petter said. "Let me emphasize that in any negotiations we undertake we will be holding firm to the positions we took into court in this case — private property is not on the table and the interests of non-aboriginal British Columbians will be respected."

The majority of the five judges who heard the case, along with seven other related cases, said the exact territorial limits of the natives' rights must be negotiated or determined in separate proceedings.

Judge MacFarlane said the appeal court recognized aboriginal rights over 58,000 square kilometres surrounding the towns of Smithers and Hazelton.

In the ruling, Judge MacFarlane appeared to back away from the lower court description of the natives' pre-colonization life as "nasty,

brutish and short." Instead, he wrote, "there is no question that the Gitksan and Wet'suwet'en people had an organized society, and that the use and occupation of land and certain products of the lands and water were integral to that society."

The earlier judgment was described yesterday as racist, and recently was called ethnocentric in a United Nations study.

Mr. George applauded a dissenting opinion in yesterday's ruling by Mr. Justice J. Douglas Lambert, who gave a strong affirmation of the right of self-government for the Gitksan and Wet'suwet'en Indians.

Five other rulings released simultaneously went against the natives. They lost three cases concerning their claim of a right to sell fish caught as part of their aboriginal rights, as well as two cases concerning the boundaries of reserves and the power of bylaws passed by Indian bands on reserves.

However, two other rulings, on hunting rights, were decided in favour of the natives, extending an earlier Supreme Court of Canada decision affirming native fishing rights.