

NATION & PROVINCES

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Indian rights no threat to B.C., top court told

Recognition of aboriginal title would lead to resolution of historic injustices, lawyers say.

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OTTAWA — Don't believe the gloom-and-doom scenarios of governments and big resource companies who say a broad definition of aboriginal rights will destroy B.C.'s non-native-Indian economy, the Supreme Court of Canada was told Tuesday.

Recognition of native title would lead to negotiation and resolution of historic injustices, and would be the equivalent of a landmark U.S. court decision 43 years ago that ordered the end of racial segregation, lawyers for the Gitksan and Wet'suwet'en people argued.

"The Crown can't say to you, 'don't ruin the economic activities of British Columbia by giving lands to these people,'" Marvin Storrow, lawyer for the Wet'suwet'en people, argued in his final

address to the court. "It won't be ruined. There will be reconciliation amongst the parties."

The final day of a crucial two-day hearing into native claims to 57,000 square kilometres in northwestern B.C. title took on a political atmosphere. Lawyers for both sides made sweeping generalizations about their adversaries' positions.

Gitksan lawyer Peter Grant passionately urged the judges to follow the lead of Australia's High Court, which made an historic recognition of aboriginal rights in 1992 that led to sweeping and controversial legislation in 1993 expanding native land rights.

That Australian decision was comparable to the 1954 U.S. Supreme Court case that ordered the end of segregation in public schools, Grant said.

It is now time for the Supreme Court of Canada to show the same leadership, Grant argued.

"We are now at the stage where the Gitksan are asking this court to direct,

to give some direction. To change things in British Columbia, yes. But to have the world come to an end? No."

But the seven top justices attending the hearing Tuesday were confronted with a stark scenario by the natives' opponents. "There are three million people [actually, 3.72 million according to the 1996 census] in British Columbia. All of them earn their living from the resources of the province," said Edward Gouge, lawyer for Alcan Aluminum Ltd., one of several resource interests intervening to oppose native claims.

"Most of us live in the city but for all of us, without exception, earning our living depends on extracting the resources of the land from the whole province ... And if aboriginal title runs in the whole province, then the rest of us can't earn a living."

The Gitksan and Wet'suwet'en demand for ownership and jurisdiction of their traditional land was initiated in 1984. B.C. Supreme Court justice Allan McEachern ruled in 1991 that aborigi-

nal title has long been extinguished by the assertion of Crown sovereignty.

But the B.C. Court of Appeal's five judges unanimously ruled in 1993 that native rights were never extinguished by the colonial government before Confederation, and that the rights are protected in the Constitution.

In a 3-2 decision, the court recognized narrow native rights of use and occupancy, and urged governments to negotiate the claims in recognition of unspecified aboriginal rights.

The Gitksan and Wet'suwet'en chiefs appealed that limited definition of their rights to the Supreme Court of Canada, but suspended the appeal pending negotiations. Land claim and self-government talks with the Gitksan broke off last year, triggering a resumption of the Supreme Court of Canada test.

Chief Justice Antonio Lamer was left poking and prodding Tuesday for a compromise ruling that would both respect the law and give some motive for native and non-native reconciliation at

the negotiating table — a constant theme of lawyers for both sides.

Lamer asked Storrow to explain how aboriginal title, if recognized as the natives want, would co-exist with Crown sovereignty and the rights of non-native private interests. Storrow said, as have other lawyers for aboriginals, that the title recognition they seek wouldn't exclude Crown or third party interests.

Gitksan lawyer Peter Grant spelled out that vision, saying the first nations seek an order for title to "occupy, possess, use and enjoy their territory and the resources of that territory. We ask for an order that the right be to harvest, manage and conserve that territory."

Federal government lawyer Graham Garton urged the court to show caution in any recognition of title. Court rulings in the past, particularly on fisheries issues, have recognized native rights but have defined them narrowly in relation to specific past activities vital to distinctive native cultures. The court is expected to rule in six to 12 months.