

Native rights suffer as hearings drag on

By Doug Donaldson

IT WAS SUPPOSED to be a tense moment.

In front of more than 100 members of the Gitksan nation from northwest B.C., a lawyer for Skeena Cellulose was about to advocate to seven judges of the Supreme Court of Canada that all aboriginal rights were extinguished with the assertion of British colonial rule 139 years ago.

The forest company, under creditor protection and close to bankruptcy, was spending big bucks to intervene on the side of the province against the Gitksan in the Delgamuukw and claim appeal to the Supreme Court in Ottawa.

As hereditary chiefs looked on from the gallery and watched on closed-circuit TV in an adjacent room, lawyer Charles Willms tried to convince the court that direct action on the land by the Gitksan threatened Skeena Cellulose's viability.

Instead of tension, the moment became farcical. Gitksan in the gallery that humid June day exchanged bemused smiles, especially with hereditary chief Delgamuukw. They knew the same man whose name is synonymous with the land title court action was finding it difficult to make business ends meet because Skeena Cellulose owed Delgamuukw House members more than \$650,000 for logging contract work completed eight months earlier.

Although the irony of the moment was enjoyed by those in the know, the two-day appeal once again reminded the Gitksan that the provincial government will not willingly acknowledge their ownership and jurisdiction over 28,000 square kilometres of traditional lands. The same sense of lack of recognition was epitomized by the decision of Premier Glen Clark's government on Sept. 12 to prop up a dinosaur with the bail-out of Skeena Cellulose to the tune of \$149 million.

Despite the fact that about 60 per cent of Skeena's overall wood needs for three sawmills and the Prince Rupert pulp mill comes from tenures granted by the provincial government to forests on Gitksan traditional land, the Gitksan had no official role in the negotiations on the company's survival.

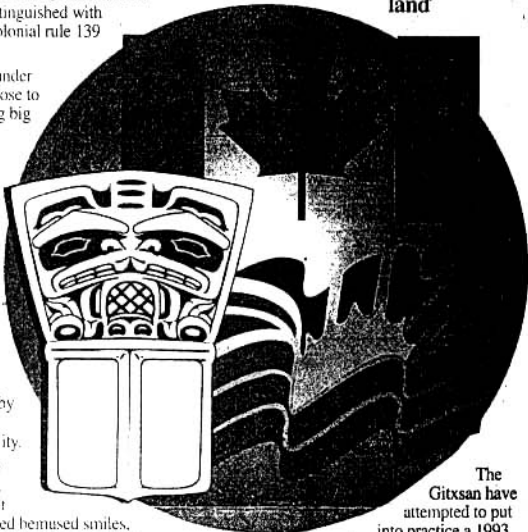
Although the provincial government communicated with unions, municipalities and businesses involved, the Gitksan were ignored in negotiations concerning the resources on their traditional land base — resources important to the economic and cultural plight of their people.

Recognition of aboriginal title by the courts would have placed the Gitksan in the thick of the Skeena Cellulose restructuring discussions. The lack of any recognized control over the land base rears its head in all aspects of government-to-government dealings between the Gitksan and mainstream society, especially when the pace of negotiations is considered. As Wet'suwet'en lawyer Marvin Storrow pointed out during the Supreme Court appeal, there is "an indifferent attitude by government about trying to settle quickly."

In treaty negotiations, when the Gitksan insisted on examining an alternative to the province's cookie cutter approach to settlements — a model that would more closely follow its traditional way of looking at land tenure — B.C. walked away from the table saying significant progress wasn't being made.

Meanwhile, the status quo extraction of natural resources on Gitksan traditional land continues, while those very resources and lands are what is supposed to be negotiated upon in the treaty process. Such behavior made a mockery of government lawyer Joseph Arvay's assertion in the Supreme Court that the province is "committed to treaty-making in an honorable way."

The provincial government communicates with unions, municipalities and businesses involved but ignores the people most concerned in the use of the land



The Gitksan have attempted to put into practice a 1993

B.C. Court of Appeal decision on the Delgamuukw case directing the provincial government to consult before approving any activities on the land that may infringe on the exercising of aboriginal rights. Yet the Ministry of Forests goes ahead with issuing logging permits after what it decides is enough consultation, despite continuing objections of Gitksan House groups. A favorable decision on aboriginal title by the Supreme Court would give more weight to the B.C. Appeal Court ruling on consultation, said Peter Grant, one of the lawyers representing the Gitksan.

"We would have a level playing field, not one where one party has a veto over another," said Grant in his closing remarks to the Supreme Court. The Gitksan do not wish to "exert an exclusive right to the whole territory. There must be a reconciliation [with the provincial government]. Neither side can claim exclusivity but B.C. does that now."

At the end of the two-day appeal in Ottawa, Gitksan hereditary chiefs and house members boarded planes for the journey back to their traditional lands in Northwest B.C. to continue their lives and wait for the Supreme Court decision which may take place this fall or sometime in the first half of 1998. When they arrived, many would occupy themselves over the summer and fall with activities which reinforce the connection to the land — fishing, berry picking, mushroom harvesting and hunting.

They also returned to the world of 60-90 per cent unemployment members of their communities face in the regular Western economy. Even among the non-Gitksan residents of the area, the unemployment rate is running at about double the national figure.

With government backing of an unsustainable forestry infrastructure in the form of Skeena Cellulose, those numbers aren't going to improve in the long-term.

As Gitksan legal team co-ordinator Gordon Sebastian said before the Supreme Court appeal, the possibility of a ruling in favor of aboriginal title brings hope for better economic times and a chance to be part of the decision-making loop on big issues such as the Skeena Cellulose deal.

"We want a real northern economy where we'll control it and direct it — Indians and non Indians alike," said Sebastian. "Our argument for ownership doesn't exclude anyone from enjoying the use of the resources on our territories. It just means we can't be left out anymore."

Doug Donaldson is editor of *Confluence Monthly*, a newspaper serving residents of the upper Skeena and Bulkley River watersheds in northwest B.C.