

## In historic judgment, top court strengthens Indian land claims



GLENN BAGLO/Vancouver Sun

**IT'S A NEW DAY:** Chief Edward John says Thursday's Supreme Court ruling will force the government to renegotiate native land claims.

The court also sends a 1991 land ruling back to B.C. court but proposes new negotiations.

STEWART BELL, PETER O'NEIL and JIM BEATTY VANCOUVER SUN

In a historic judgment, Canada's highest court tried to clarify the murky concept of native Indian land rights Thursday, but there were mixed opinions about whether it succeeded.

While B.C. aboriginal leaders welcomed the ruling, saying it had strengthened their position in land-claim talks, critics played down its significance.

Although the Supreme Court of Canada ordered a new trial in the Delgamuukw land claim in the Interior, the justices ruled on several key issues that arose in the case.

Most significantly, they described the nature and scope of "aboriginal title," set out the rules for proving its existence, and ruled it is a constitutionally protected right.

Aboriginal title, which is different from ownership, exists where tribes occupied certain lands before they were taken over by the Crown, the court said.

Lands on which aboriginal title is found to exist cannot be used for purposes that conflict with the tribe's traditional relationship with the land, the court ruled.

It also said the federal and provincial governments may infringe upon aboriginal title only if they have a "compelling and substantial legislative objective," such as logging or economic development.

But when that occurs, tribes must be consulted about the use of their traditional lands, and must receive "fair compensation" when their aboriginal title is infringed.

The court also said aboriginal title cannot be extinguished by the province. The court was also asked to rule on self-gov-

VICTORY from A1

## Native ruling gets mixed reviews

Indian leaders see the Supreme Court judgment as a vindication in their struggle for recognition in their land-rights disputes, while others see it as the beginning of more uncertainty.

ernment, but instead referred the matter back to the B.C. courts.

At news conferences in Vancouver, Ottawa and Hazelton, B.C. native Indian groups declared the judgment a victory in the century-old struggle for recognition of aboriginal land rights.

"The Supreme Court of Canada has restored a measure of faith in aboriginal people in British Columbia in the legal system," said Squamish Chief Joe Mathias. "Aboriginal title is alive and well and living in the territories of First Nations."

University of Victoria Prof. Frank Cassidy called the decision "a tremendously significant ruling" and "the most significant ruling by the Supreme Court in relationship to aboriginal rights in the history of Canada."

But advocacy groups said Indian leaders were inflating the importance of the case to bolster their bargaining position in treaty talks.

"I think the predictable claims of a landmark victory are somewhat overstated," said Phil Eidsvik of the B.C. Fisheries Survival Coalition.

The court was ruling on a law suit brought against the B.C. government by hereditary chiefs from the Gitksan and Wet'suwet'en tribes in 1984. The chiefs asked the court to recognize their ownership of 58,000 square kilometres of land in the B.C. Interior.



GLENN BAGLO/Vancouver Sun

**CHIEF JOE MATHIAS:** Sees new Indian faith in the legal system.

The Supreme Court justices overturned most of the 1991 ruling by B.C. Supreme Court Justice Allan McEachern, now chief justice of B.C., who said the chiefs' rights had been extinguished at the time of colonization.

The court also "reluctantly" ordered a new trial for the case, saying McEachern erred by not allowing the chiefs to admit as evidence the oral histories of the Gitksan and Wet'suwet'en people.

But the high court also said it

did not necessarily believe there needed to be another trial and instead suggested the dispute should be settled in negotiations.

"Ultimately, it is through negotiated settlements, with good faith and give and take on all sides... that we will achieve... the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown," the court said.

"Let us face it, we are all here to stay."

It's still not clear what impact the ruling will have on treaty ne-

gotiations currently under way with roughly four dozen B.C. Indian tribes. There could also be impacts on the resource sector.

Business Council of B.C. president Jerry Lampert called the court decision "more bad news for the B.C. economy and potential B.C. investment" because it did not put the matter to rest.

"Business and industry really thrive on certainty... this kind of decision, where it doesn't really move the ball ahead but rather sends it right back to the first stage, means that we have five to 10 years of potential litigation ahead of us, so it just creates more uncertainty."

Aboriginal title arises where there is a "special bond" between the tribe and the land, the court said. Title is also "inalienable and cannot be transferred, sold or surrendered to anyone other than the Crown."

The court seemed to take a broader, more modern view of aboriginal rights than in the past. While past court rulings recognized the right to practise traditional activities such as hunting and fishing, the Supreme Court said aboriginal title goes beyond that.

"Aboriginal title is a right in land and, as such, is more than the right to engage in specific activities," the court said. "Rather, it confers the right to use the land for a variety of activities, not all of which need be aspects of practices, customs and traditions."