



Kaska Dena News

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TREATY UPDATE

Supreme Court Ruling *Tsilhqot'in Nation v British Columbia*: Summary

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On June 26, 2014, the Supreme Court of Canada released its decision in *Tsilhqot'in Nation v British Columbia*. The decision was ground-breaking because it was the first time a Canadian Court had ever made a declaration of Aboriginal title regarding land. Since 1973, the Supreme Court has been considering Aboriginal title. *Tsilhqot'in* is best understood as the latest step in the evolution of this case law.

The dispute arose in 1983 when the Province granted a forest license to a lumber company, allowing it to harvest trees on the traditional territory of the Tsilhqot'in Nation. Eventually, this gave rise to a claim for Aboriginal title which ultimately made its way to the Supreme Court.

The Supreme Court applied the *Delgamuukw* test for Aboriginal title, which is based on "occupation" prior to the assertion of European sovereignty. The Tsilhqot'in had to show that occupation of the area claimed was **sufficient, continuous** (where present occupation was relied on) and **exclusive**. The Court approached this test in a culturally-sensitive way that combined common law ideas about land with those held by the Tsilhqot'in. The Court confirmed that Aboriginal title is not confined to specific village sites or farms, but can apply to broad areas that were regularly used for hunting, fishing, trapping and foraging.

The Court held that the Tsilhqot'in had established Aboriginal title. The Tsilhqot'in had regularly used parts of the land claimed. The archeological, historical, geographic and oral evidence indicated continuous occupation. The Tsilhqot'in's pre-sovereignty practice of repelling others from their land and demanding permission from outsiders who wished to enter it showed exclusive occupation.



Chief Roger William, right, of the Xeni Gwet'in First Nation, is flanked by chiefs and other officials. (Photograph by: Darryl Dyck, The Canadian Press)

The court noted that Aboriginal title includes the following rights:

- decision-making power over how the land will be used;
- enjoyment and occupancy of the land;
- possession of the land;
- economic benefits arising from the land; and
- pro-active use and management of the land.

There are also restrictions that apply to the use of Aboriginal title land, including:

- it can only be alienated to the Crown; and
- it is held collectively and cannot be used in such a way that deprives future generations of the benefit of the land.

If the government wants to use Aboriginal title land, they must first obtain the consent of Aboriginal title holders. If the Aboriginal group does not consent, the government can only proceed if it can justify its actions on the basis of a broader public good. Aboriginal title does not guarantee non-interference. However, any interference that substantially deprives future generations of the benefit of the land cannot be justified.

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Where Aboriginal title remains unproven, the government still has an obligation to consult and, if appropriate, accommodate. The stronger the claim and the more serious the impact of the government's proposed action, the more consultation and

accommodation is required. The strength of the duty can also change over time as an initial claim to Aboriginal title grows stronger to the point of resulting in a declaration of title.

The Court held that the Crown had failed to consult or accommodate the Tsilhqot'in and thus breached its duty to accommodate.

Treaty Update: Tsilhqot'in (William) Ruling & Kaska Dena Aboriginal Title – the way forward

The date of June 26th will long be remembered as an historic day for Aboriginal peoples as it is the date of the Supreme Court of Canada ruling on the Tsilhqot'in (William) case recognizing Aboriginal Title. The Supreme Court Tsilhqot'in ruling did what the Calder case in 1973 and the *Delgamuukw* in 1997 did not do – it gave a definitive ruling on Aboriginal Title, and is being referred to as “a game changer” as it lays the legal foothold to change the way BC and Canada do business with Aboriginal peoples.

In response to this momentous ruling, Premier Clark called a meeting between her entire Cabinet and BC Aboriginal Leaders. The September 11th meeting – also billed as an historic event, was attended by Kaska Dena Chiefs along with approximately 200 other BC Aboriginal leaders. This meeting gave Premier Clark the opportunity to acknowledge the Supreme Court ruling to BC First Nation leaders and to discuss a path forward.

While the Supreme Court ruling said that Aboriginal Title exists, a condition that has been left by the Court Ruling is that Aborigi-

nal Title must be proven and that the route to prove Aboriginal Title is either through the courts or through negotiating a Government to Government agreement.

In Premier Clark's opening comments to the BC Chiefs she acknowledged that BC is committed to negotiating and creating partnerships with BC First Nations saying “We want partnerships to emerge from negotiations. Going to court for 30 years cannot be the answer.” (The Tsilhqot'in court case took close to 30 years.)

In keeping with the Supreme Court decision, the next step is for Kaska Dena to gain legal title to the land. With the exception of private lands, legal title to Kaska Dena Traditional Territory in BC is held by BC and/or Canada – even Indian Reserve lands are owned by Canada. Kaska Dena are in the desirable position of being well advanced in Treaty negotiations – a government to government process that can see Kaska achieve legal title to our land.

Kaska Dena Chief Negotiator, Dave Porter, said “Aboriginal title has now been affirmed, and the way for title to be realized is either through the courts or negotiations. We intend to negotiate aboriginal title with Canada and BC at the Treaty table within the Treaty Process. We now must pursue the Agreement in Principle with the William decision in hand to produce a more equitable treaty agreement. For our brothers and sisters in the Yukon this decision is good news and will require the governments to negotiate an understanding with Ross River and Liard with respect to lands and resource management as well.”

Photo Credits:
Tanya Ball
Maureen Garrity
Michelle Miller
Bruce McKay



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Building Treaty Awareness among Kaska Dena Communities

Kaska Dena members were asked to submit questions they would like to have answered about Treaty and Treaty Negotiations. In response to the questions, a document entitled Kaska Dena Treaty Negotiations: Building Treaty Awareness was developed.

Following is a sample of questions that were asked by Kaska Dena members:

Q. What is an AIP?

A. An Agreement-in-Principle (AIP) is an agreement that is negotiated in the Treaty Process. It is not legally binding and is meant to be a “blue print” or starting point to negotiate the Final Agreement. The AIP is made up of approximately 27 chapters that describe:

- First Nations government structures and powers, and related financial arrangements;
- Jurisdiction and ownership of lands, water and resources, and
- Cash and land settlements

Q. What is the status of our AIP?

A. We haven’t finished negotiating the AIP, but we are close and we are aiming to have the AIP Chapters negotiated and legal review completed by spring, 2015.

Q. What is a Final Agreement?

A. The Final Agreement is the Treaty. We will negotiate a Final Agreement only after Kaska Dena have reviewed and approved the AIP. The Final Agreement is legally binding and protected by the Constitution of Canada.

Q. Who Approves the Final Agreement?

A. Kaska Dena members will vote on whether or not to accept the Final Agreement. Approval of the Final Agreement requires a secret ballot vote by Kaska Dena eligible voters. It will also require an approval process

by BC and Canada. Ratification of the Final Agreement is taken seriously. In fact a chapter entitled “Ratification of the Final Agreement”, which details the Kaska Dena approval process of the Final Agreement, is included in the AIP.

Q. Will I lose my Status after Treaty?

A. No, you won’t. Kaska Dena citizens who are Status Indians will still have status cards and will continue to be eligible for all of the programs and services that you are currently entitled to (e.g. medical, eye glasses) as a Status Indian. This doesn’t change after Treaty.

Q. Will I still be able to Hunt?

A. Yes. Kaska Dena will have the same rights to hunt as you do now. Hunting rights will not change after Treaty.

Q. What will be different with a Treaty?

A. We will have certainty over our Aboriginal Rights and Title. Kaska Dena will no longer be governed by AANDC and the *Indian Act*. We will be self-governing, able to make our own decisions about matters that are important to us such as protection, use and access of our lands, water and resources, and education of our children.

Your questions are important and the Kaska Dena Treaty Team is committed to responding to your questions. Treaty update meetings and dinners will continue to take place in each community and will provide an opportunity to ask questions directly with members of the Kaska Dena Treaty Team. You can also submit a question to the Treaty Team by contacting (250) 596-2966 Michelle Miller, KDC Treaty Coordinator or by email: kdcexecdir@northwestel.net

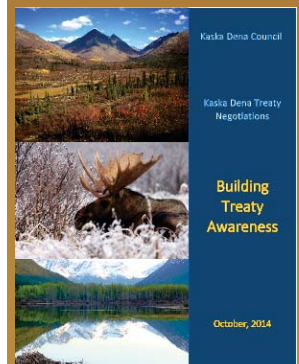
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The Kaska Dena Treaty negotiating team anticipate completing the draft chapters for the Agreement in Principle (AIP) by December, 2014 subject to legal review. Then the focus will be on the lands negotiations based on Aboriginal Title through the Tsilhqot’in (William) ruling. Kaska Dena legal review of the Agreement in Principle will ensure that the AIP is consistent with the Tsilhqot’in

(William) ruling. Any clauses which are found by the Kaska lawyer to be inconsistent with the Supreme Court ruling will be brought back to the Treaty Table.

Once the AIP has gone through legal review and the AIP has been initialled by the Chief Negotiators of Canada, BC and Canada, the AIP will be brought to the Kaska members for your review and decision as to acceptance of the AIP.

Your questions are important and the Kaska Dena Treaty Team is committed to responding to them. Treaty update meetings and dinners will continue to take place in each community and will provide an opportunity to ask questions directly to members of the Kaska Dena Treaty Team.



KASKA DENA COUNCIL – 2014 GENERAL ASSEMBLY Celebration of Kaska Aboriginal Title

The KDC Annual General Assembly took place this year from July 22-24th in Lower Post and was hosted by Daylu Dena Council. The theme “Celebration of Kaska Aboriginal Title” was a fitting one in light of the June 26, 2014 Tsilhqot’in First Nations court decision (better known as the Williams case), in which the Supreme Court of Canada granted the first ever declaration of Aboriginal Title – a significant victory for Aboriginal peoples across Canada.

The community did a wonderful job of preparing the grounds for the meetings. They built two structures in which people gathered for business, eating, socializing, bingo, stick gambling and dancing. This year’s agenda was structured to allow for two days of business and the final day for a “cultural celebration.” The General Assembly was well attended by members from Kwadacha, Dease River and Daylu Dena Council.

Day one of the agenda covered important discussions regarding the above mentioned court decision. Also on



day one there were two guest speakers – Dave Haggard, BCTC Commissioner and Herb Norwegian, Grand Chief Dehcho First Nation. Each provided the Assembly with important information with regards to treaty, devolution of the NWT and land use planning. Dave Porter gave a presentation to Dave Haggard acknowledging Dave for the admirable work he has done in his three consecutive terms as Commissioner with BC Treaty Commission.

Day two of the Assembly allowed the Kaska Dena Treaty Team to provide important updates to the members regarding the status of treaty negotiations. The final day of the Assembly was set aside for cultural events and socializing. Everyone took part in activities, which ranged from horseshoes to hand games.

A highlight of the General Assembly was the Kaska Dena Drummers represented by Steven Abou (Kwadacha First Nation), Victor Kisoun (Dease River First Nation); Joseph Jules (Liard First Nation); Greg McLeod (Ross River First Nation); Benjamin Doctor (NWT); Russell Magun (Liard First Nation); Adrian Porter

Day one of the General Assembly covered important discussions regarding the Tsilhqot’in First Nations court decision.



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(Kwadacha First Nation) and Melvin Tibbett Jr. (Daylu Dena Council).

These talented drummers opened the General Assembly with a Dena Drum song and drummed throughout the assembly. Their traditional drumming and drum songs were enjoyed and appreciated by all; from youth to Elders alike, and were such a highlight during the stick gambling. The Kaska Dena Drummers have had a busy schedule of performing and all in attendance at the General Assembly were so appreciative that they were able to come and drum, as their presence added to over-all success of the 2014 General Assembly. Look for an article on the Kaska Dena Drummers in the next issue of Kaska Dena News.



Kaska Dena Drummers, Left to Right: Steven Abou, Victor Kisoun, Joseph Jules, Greg McLeod, Benjamin Doctor, Russell Magun, Adrian Porter, Milvin Tibbett Jr.



Team playing traditional Hand Games.

The final day of the Assembly was set aside for cultural events and socializing. Everyone took part in activities, which ranged from horseshoes to hand games.



Mida Donnessey and Peter Stone.



Hammond Dick and Ruby Johnny teaching the youth the rules of Hand Games.



Back Row from left to right: Roy Abou, Jean Poole, Emil McCook, Helen Kirk, Charlie Pete.
Front Row from left to right: Tommy Poole, Fred Hasselberg, Willie Poole, Mida Donnessey, John Porter, Jessie Porter, Annie Johnny, Eileen Vanbidder

Treaty Main Table in Good Hope and Lower Post

Treaty Main Tables were held this past June in both Good Hope Lake and Lower Post. While Main Tables have taken place in Kwadacha over the past few years this was the first time in a long time that Canada or BC treaty negotiators had visited Good Hope Lake and/or Lower Post.

The Main Table in Good Hope Lake took place on June 25th, 2014 in the Community Center. Canada was represented by Chief Negotiator Gavin Fitch and Lead Negotiator Dave Miranda. BC was represented by Chief Negotiator Roger Graham, Assistant Negotiator Bonnie Hurlock and Kim Mackenzie. Kaska Dena were represented by Chief Negotiator Dave Porter, Assistant Negotiator Bill Lux, Treaty Coordinator, Michelle Miller and technical advisor Maureen Garrity.

Chief Cat Lee welcomed BC and Canada to the community and Elvis Fjellner presented an update on the Troutline Creek run of the river project. The Main Table presented an update to the community members on Treaty negotiations. The Main Table was



followed by a lunch prepared by community members and a tour of the Saw Mill by Elvis Fjellner. Following the saw mill tour Good Hope members took Canada and BC representatives on a tour down to Rapid River to view one of the ITA land sites and to get a view of the Horseranch Range as well as to the top of Haskin Mountain to give the guests a view of the surrounding Kaska Dena lands.

The Main Table in Lower Post took place on June 26, 2014, under the Drum Circle with the same representatives from BC, Canada and Kaska Dena present. Deputy Chief Walter Carlick welcomed the guests and spoke about the community issues; in particular the state of housing and the outstanding issue of the Residential School. Daniel Morris, Chief of Liard First Nation also spoke to Canada and BC about the Residential School and other issues.

Following the Main Table, the guests joined a barbeque at the Denetia School with the school children, and Deputy Chief Carlick took the guests on a tour to show them the Residential School and state of some of the houses in Lower Post.

The Main Table presented an update to the Community Members of Good Hope Lake, followed by a lunch prepared by the community and a tour of the saw mill by Elvis Fjellner.



Kaska National Leadership

Throughout the last year the Kaska leaders of Daylu Dena Council (DDC), Kwadacha First Nation (KFN), Dease River First Nation (DRFN), Ross River Dena Council (RRDC) and Liard First Nation (LFN) have committed to working together and moving forward as a Nation. Kaska have always said that we are one Nation – one people. All leaders agree that while the borders of BC, Yukon and NWT separate the Kaska Nations by causing us to often work under different jurisdictional processes with BC, Yukon and Canada, that it is important that we continue to work together as a Nation.

Chiefs Ruby Johnny (DRDC), Brian Ladue (RRDC), Daniel Morris (LFN), Donny Van Somer (KFN) and Deputy

Chief Walter Carlick (DDC) have held numerous meetings to date to discuss opportunities to develop common strategies to address lands and resource development, social, political, and educational areas in their communities.

The most recent leadership meeting was held in Whitehorse on August 20th where the leaders agreed to build a strategy to supply fuel to the Kaska Nation. The meeting also had discussions on initiatives such as Kaska Energy, social concerns, and forestry.

The Kaska leaders have all committed to making this table a priority and have expressed the importance of moving forward together.

Daylu Dena Council and Dena Kayeh Institute Science Camp

The science camp was held at the Atse Dena Tunna Camp meaning old peoples trail, route of the ancient ones, or also referred to as the Davie Trail. The camp was facilitated and coordinated by Tanya Ball a recent graduate of Environmental Studies and currently employed by Dena Kayeh Institute as the GIS technician and Traditional Knowledge Coordinator.

The camp was held August 18th - 21st, 2014. The camp had a total of 10 youth participants and seven community members that provided services.

The camp offered science experiments such as exploding volcanoes, elephant toothpaste and rubber eggs to name a few. These experiments showed children the scientific reactions of simple household products. We also did traditional medicines that were found on the Davie trail that can be used for infections, ailments and other healing methods. The youth were also taught how to clean and gut fish that were caught from the Dease River, mainly Grayling. We also did a drum making session and all participants made and took home their own

drums made out of caribou hide. Elder Dennis Porter also told the history of the Davie trail that leads from the camp to Kwadacha.



We're on the web!
Visit:
www.kaskadena-council.com

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Science Camp 2014



Participants at the Atse Dena Tunna Camp

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