



Summary of the Tsilhqot'in Aboriginal Title Case (William Case) Decision

On June 26, 2014, the Supreme Court of Canada rendered a historic judgment in the Tsilhqot'in Nation's Aboriginal title case. All 8 judges agreed with this decision.

Aboriginal title declared – for the first time in Canada

The Court declared Aboriginal title to approximately 1900 km² of the Claim Area, including Xeni (Nemiah Valley) and much of the surrounding area, stretching north into Tachelach'ed (Brittany Triangle) and along the Tsilhqox (Chilko River).

Aboriginal title lands are shown in dark green on the map at the back of this document.

This is the **first time in Canadian history** that a court has declared Aboriginal title to lands outside of a reserve.

The Court rejected the “postage stamp” view of Aboriginal title once and for all. Aboriginal title is not restricted to small, intensively used sites. Aboriginal title extends to all the territory that a First Nation *regularly* and *exclusively* used when the Crown asserted sovereignty. This means ownership is of areas that were used regularly and only by the Tsilhqot'in at the time the Canadian government staked its claim.

Aboriginal title is the right to control the land

The Court confirmed that Aboriginal title gives the Tsilhqot'in the right to control the land. These lands can be managed according to Tsilhqot'in laws and governance.

Aboriginal title also means the Tsilhqot'in have the right to the economic benefits of the land and its resources.

Aboriginal title is the “**right to choose**” how these lands will be used. The Tsilhqot'in people can proactively use and manage these lands for traditional activities *and* modern purposes.

The only limit on the ways that Aboriginal title lands can be used is that they cannot be developed in a way that deprives future generations of the control and benefit of the land.

Protections from government jurisdiction

The Court confirmed that both the Province and Canada has some element of jurisdiction in exceptional circumstances.

However, the government must first seek the **consent** of the Tsilhqot'in people before interfering with Tsilhqot'in Aboriginal title lands.

If the government cannot obtain consent, then it cannot interfere with Tsilhqot'in Aboriginal title unless it can *justify* this infringement. The Court indicated that infringements of Aboriginal title will “not be lightly

justified”. This means it will be very difficult for the government to show that it has a good enough reason to step in and use the title land.

In this appeal, the Court confirmed that the clear cut forestry proposed for the Claim Area was not justified. This means that the government was wrong to propose logging in the Claim Area.

The Forest Act does not apply to Tsilhqot'in Aboriginal title lands

The Court held that the *Forest Act* does not apply to Tsilhqot'in Aboriginal title lands, because the statute itself says that it regulates “Crown timber”. The *Forest Act* is the legislation that authorizes the government and forestry companies to harvest timber.

Because the timber on Tsilhqot'in Aboriginal title lands belongs to the Tsilhqot'in, and not the Crown, the *Forest Act* does not apply as currently drafted. This means that the Province cannot authorize forestry companies to harvest timber on Tsilhqot'in Aboriginal title lands.

Tsilhqot'in Aboriginal rights to the entire Claim Area

The proven Tsilhqot'in Aboriginal rights to hunt, trap and trade were not at issue before the Supreme Court of Canada. **These rights were confirmed by the B.C. Court of Appeal in 2012.**

Accordingly, the Tsilhqot'in people continue to hold proven Aboriginal rights to hunt, trap and trade throughout the

entire Claim Area (dark green areas on the attached map).

What does this judgment mean for other First Nations?

First Nations across Canada are celebrating this victory.

The Assembly of First Nations called it a “game changer”. This judgment of the Supreme Court of Canada sweeps away the excuses and justifications used by the Government to deny real recognition of Aboriginal title in Canada.

We can expect First Nations to assert much greater control over their traditional territories. We can expect a greater expectation of First Nations’ consent before major projects proceed.

There is a lot of work to be done. But the Tsilhqot’in people, by defending our culture and land, have delivered a major victory for all First Nations and their supporters.

Sechanalyagh! (Thank you to all)

Proven Tsilhqot’in Rights & Title Area:

Green cross hatches is proven Rights & Title and Green is proven Rights

