

# SUMMARY THE TŜILHQOT'IN DECISION ABORIGINAL TITLE CASE

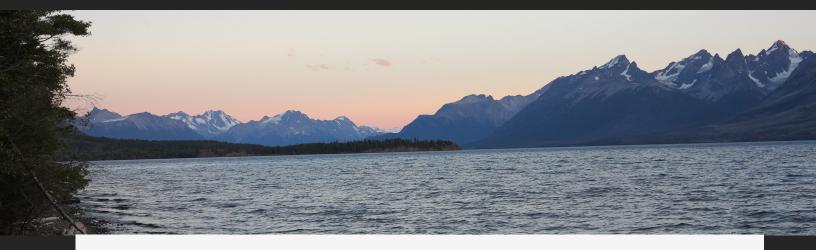


TŜILHQOT'IN NATIONAL GOVERNMENT

More Information: www.tsilhqotin.ca

#### WHAT IS IT

### $\overline{ABOUT}$



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

Aboriginal title declared – for the first time in Canadian history.

The Court declared Aboriginal Title to approximately 1900 square kilometers of the Claim Area, including Xeni (Nemiah Valley) and much of the surrounding area, stretching north into Tach'elach'ed (Brittany Triangle) and along the Tŝilhqox (Chilko River).

Aboriginal Title lands are shown in the map at the end of this summary.

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 Tŝilhqot'in at the time the Canadian government staked its claim.

WHAT IS

### ABORIGINAL TITLE



#### Aboriginal Title is the right to control the land

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

Aboriginal title also means the Tŝilhqot'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 Tŝilhqot'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

WHAT ABOUT

### *FURISDICTION*



#### Protections from other 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 Tŝilhqot'in people before interfering with Tŝilhqot'in Aboriginal Title lands.

If the government cannot obtain consent, then it cannot interfere with Tŝilhqot'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.



#### FORESTRY



#### The Forest Act

The Forest Act does not apply to Tŝilhqot'in Aboriginal Title lands.

The Court held that the Forest
Act does not apply to
Tŝilhqot'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
Tŝilhqot'in Aboriginal Title
lands belongs to the Tŝilhqot'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 Tŝilhqot'in Aboriginal
Title lands.

WHAT ABOUT

#### INDIGENOUS RIGHTS



#### **Aboriginal Rights**

Tŝilhqot'in Aboriginal rights remain to the entire Claim Area.

The proven Tŝilhqot'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 Tŝilhqot'in people continue to hold proven Aboriginal rights to hunt, trap and trade throughout the entire Claim Area (see map at the end of this summary).

## FUTURE



What does this judgment mean for other First Nations?

First Nations across Canada continue to celebrate 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 also expect a greater expectation of First Nations' consent before major projects proceed.

There is a lot of work to be done. But the Tŝilhqot'in people, by defending our culture and land, have delivered a major victory for all First Nations and their supporters. Nexwechanalyagh (We thank you).



