

For immediate release—November 18, 2004

SUPREME COURT DECISION BUILDS BUSINESS UNCERTAINTY

Victoria – The facts of today’s Supreme Court ruling on the Haida case contradict the BC government’s view that the ruling creates business certainty.

“Despite assertions from Premier Campbell and Attorney General Geoff Plant today, the decision rejects the BC’s current First Nations consultation approach outright,” said Will Horter, Executive Director of the Dogwood Initiative.

“It leaves no doubt that consultation methods must change, and therefore that recent mergers and new tenures in the logging and other industries are at risk due to a lack of consultation. Challenges to these mergers and tenures are already being prepared and should arrive in the courts soon,” Horter said.

The Supreme Court of Canada affirmed that the government has a duty to consult and, where necessary, accommodate First Nations about legislation, policy, decisions, and tenures governing land use and resource extraction. This duty arises before First Nations prove their rights or title.

The Haida ruling raises questions about the BC government’s attempt to offload land and resource decision-making and consultation functions to corporations. Since recent reforms to virtually all resource legislation and regulation occurred with almost no consultation with First Nations, the reforms are now vulnerable to constitutional challenge.

The government and industry have, predictably, responded by downplaying the significance of the case. Some of their comments understate the terms of the judgement, and others are incorrect. For example:

- **Certainty:** Attorney General Geoff Plant argues that the case will reassure the investment community, indicating that companies do not have a freestanding duty to First Nations. However, the Court rejects current Crown policy, stating: “*If consultation is to be meaningful, it must take place at the stage of granting or renewal [of licences].*” This puts most BC logging and oil and gas tenures at risk.
- **Economic compensation:** Attorney General Plant, in a media call on 18 November, said the Supreme Court’s *Haida* judgement includes a paragraph stating the government can satisfy its duties by providing economic compensation (i.e. money) to First Nations. He was unable to find the paragraph, but said he had read it. The judgement contains no such statement. In fact, indirectly the Court says the opposite. The court emphasizes that, “*Meaningful consultation may oblige the Crown to make changes to its proposed action based on information obtained through consultations.*”

Dogwood Initiative is advising First Nations throughout BC, including the burgeoning *Title & Rights Alliance*, on legal and financial avenues to ensure that the Crown and resource corporations respect Aboriginal Title and protect the land for future generations.

For more information contact:

Will Horter, Dogwood Initiative

250-370-9930 x23

Email: whorter@dogwoodinitiative.org

Website: www.dogwoodinitiative.org