

LITIGATION AGAINST THE GITXSAN TREATY SOCIEY

UPDATE – October 28, 2011

The court case to stop the misconduct of the Gitxsan Treaty Society and their negotiations of the Gitxsan Alternative Governance Model (GAGM) moves forward!

There are developments in the action related to the appeal of Judge Kelleher's decision to let B.C. Treaty Commission out of the case, and also related to the trial judge and trial date.

In our case we claim that B.C. Treaty Commission has been negligent for failing to ensure that GTS has a proper mandate to negotiate a treaty. The B.C. Treaty Commission applied to the courts to have our claim struck out. The Spookw legal counsel opposed the application and argued that the other defendants (Canada and B.C.) state that the Treaty Commission has the responsibility for ensuring that GTS had a proper mandate to negotiate a treaty. We said the claim should be allowed to be decided at the trial and not before. Mr. Justice Kelleher, the trial judge, heard the Treaty Commission's application and on July 26, 2011 he delivered a judgment in favor of the Treaty Commission. The Spookw plaintiffs consider this judgment to be in error, and commenced an appeal in the B.C. Court of Appeal.

After we filed to appeal the BC Treaty Commission decision Canada, (supported by B.C.) made an application to adjourn the trial dates. The trial is scheduled for two blocks of time, January 23 to February 24, 2012 and then March 19 – May 4, 2012. Canada says that, if we are successful in our appeal, the Treaty Commission will have to come back as a defendant to this case. However, there isn't enough time between now and the start date of the trial for the Court of Appeal to hear the appeal and decide it.

If the case is adjourned, because of the backlog of cases before the courts, it is possible that new trial dates cannot be reset until 2013

The Spookw plaintiffs believe that Mr. Justice Kelleher's decision to let off BC Treaty Commission was in error. However we believe the trial must start as soon as possible. And rather than risk losing our court dates in May 2012 we have instructed our legal team to abandon the appeal. We are hopeful that the court dates in May 2012 will not be set aside by

stalling tactics and legal maneuverings by the defendants who do not want this case to go forward.

In another development, in October 2011 Judge McEwan was reassigned to replace Judge Kelleher as trial judge for this case. Judge McEwan is not available to start the trial on January 23, 2012, however he is able to start on March 19th 2012. The trial will be held in Smithers.

Depending on court schedules, the GTS will likely be going before the judge in December with a motion to strike. The GTS is seeking to have the court case thrown out. The plaintiffs' legal team are preparing to defeat the application. As explained in our update dated October 4, 2011, the GTS is claiming that the plaintiffs are not members of the Gitksan Treaty Society and therefore do not have a say in what the society is doing.

We encourage all Gitksan people to continue to be involved because of the serious impact it may have on you, including the loss of your Indian status. GTS refuses to be open, transparent and accountable and continues to negotiate their GAGM despite all opposition. We encourage you to stand up and let your voices be heard! Together we can stop the GTS from negotiating away our rights.