

LITIGATION AGAINST THE GITXSAN TREATY SOCIEY:
BACKGROUND AND STATUS REPORT

March 31, 2011

The legal action was commenced on December 2, 2008 in the B.C. Supreme Court: Spookw et al. v. Gitxsan Treaty Society et al, action No 15150 Smithers Registry.

The plaintiffs are four Gitxsan Indian Bands, together with six Gitxsan Hereditary Chiefs representing other Hereditary Chiefs, Wing Chiefs and Matriarchs and members.

Through their action the Gitxsan Bands and Hereditary chiefs seek an order winding up the GTS on grounds that it is unaccountable and has failed to act according to Gitxsan law or to advance Gitxsan interests.

The plaintiffs also seek declarations that Canada and the Province are in breach of their fiduciary duty and duty of honour to the Gitxsan by continuing to negotiate given their knowledge that the GTS is not mandated by the Gitxsan people.

The plaintiffs also seek a finding that the B.C. Treaty Commission has been negligent for failing to ensure that GTS has a proper mandate to negotiate a treaty

Judge Kelleher has been appointed to be the trial judge. He is also responsible for managing the case as it goes forward. Case Management Conferences with Judge Kelleher have been held approximately every 3 months. At each Conference, Judge Kelleher directs and sets deadlines for the next steps in the case.

Judge Kelleher is located in Vancouver. However, he has directed that the trial of the action will be held in Smithers, and Judge Kelleher will come to Smithers then for that purpose. The trial has been set to commence on January 23, 2012 for 50 days.

On October 12, 2010 each of the Defendants delivered their Response (Statement of Defence) to the Plaintiffs' claim to stop the GAGM.

In July 2010 and January 2011 all parties to the case delivered their 1st and 2nd Lists of Documents in their possession. So far, approximately 5000 documents have been listed. Judge Kelleher set April 15th, 2011 as the cut off date for the parties to deliver their 3rd lists of relevant documents in their possession

Judge Kelleher has directed that the Examination for Discoveries of the defendants, which involves questioning a representative of each defendant about their documents and the issues in the case, must occur before July 15, 2011.

The BCTC has recently indicated that it is bringing a motion to dismiss the claim against them. This has been scheduled to be heard in Vancouver May 4th, 2011.