Canada's Application for Judicial Review of Independent Tribunal Ruling Succeeds in Denying Justice for Williams Lake Indian Band

(Coast Salish Territory / Vancouver BC – March 4, 2016). On February 29, 2016, the Federal Court of Appeal overturned the 2014 Specific Claims Tribunal ruling in favour of the Williams Lake Indian Band's village site specific claim, and took the unusual step of rendering a new decision based on the facts of the claim.

"We share the Williams Lake Indian Band's deep disappointment that Canada has placed yet another barrier in the path to the resolution of their legitimate and valid claim, and we commend and honour the community for its tireless, decades of long work to obtain justice," stated Grand Chief Stewart Phillip, President of the Union of BC Indian Chiefs.

The Federal Court set aside the Tribunal's decision that the Colony of British Columbia breached its lawful obligations when it failed to protect the Williams Lake Indian Band's main village from settler preemption and reserve those lands for the Band, and that Canada failed to fulfill its fiduciary obligations to the Band when it failed to take measures to return the village lands to them. The Federal Court substituted vastly different conclusions based on its own review of the facts of the case and dismissed the Band's claim on the basis that they received alternate reserve lands as a replacement for their village.

The Specific Claims Tribunal is a unique independent body of Superior Court justices established in 2008 to rectify Canada's conflict of interest in adjudicating claims and restore confidence in the integrity of the specific claims process to First Nations. Members of the Tribunal have the necessary legal and historical expertise to decide complex historical grievances pertaining to Canada's legal obligations under the Indian Act to protect First Nations lands and assets.

Federal legislation stipulates all Tribunal decisions are to be final and binding and not subject to appeal. A judicial review provision exists for matters where the Tribunal's jurisdictional reach, procedures and correct application of the law are at issue. Despite these clear guidelines, the Federal Court itself described its decision as an appeal.

Grand Chief Phillip continued, "Canada must seriously reflect on the paternalistic, overreaching nature and injustice of the Federal Court's decision. This ruling completely undermines the independence and authority of the Tribunal that Canada established through legislation to restore legitimacy to the specific claims process and in so doing, further erodes First Nations confidence in the process to resolve these grievances. The Federal Court's astounding reinterpretation of the historical evidence and the troubling national ramifications of its decision confirm the obvious: the judicial review provision in the Specific Claims Tribunal Act must be restricted to issues of jurisdiction and procedure. This was promised in the planning stages of the Tribunal and in Parliamentary reviews of the Act to ensure justice and finality."

Grand Chief Phillip added, "The substantive historical and legal specific claim issues must be heard by judges with historical knowledge and expertise in Aboriginal law, as intended. The Government of Canada must stop pushing appeals in Federal Court contrary to the intent of the Act and must uphold the principles of fair and final resolution of these historical grievances. If these principles fail to guide Canada's actions, First Nations will be forced to resolve these

issues in other ways. History has proven that unresolved specific claims have led to long, expensive and protracted lawsuits; serious land-use conflicts and violent stand-off events. Oka, Ipperwash and New Caledonia all resulted from unresolved specific claims."

Chief Maureen Chapman, Chair of the BC Specific Claims Working Group echoed Grand Chief Phillips remarks: "When the Specific Claims Tribunal Act was introduced, Canada and First Nations understood that Tribunal decisions could be subject to judicial review only regarding questions of jurisdiction or process, there would be no option to appeal. This appalling decision represents a full appeal. The Court altered many of the Tribunal's findings of fact, based on its own re-weighing of the evidence and without the benefit of the Tribunal members' expertise in the area of Aboriginal law or land claims. I am deeply concerned that with one irresponsible decision, the Court has undermined the Tribunal's intended purpose: to bring justice and final resolution to First Nations.

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