

Haida Nation v. British Columbia (Minister of Forests) **2004 SCC 73**

Background

Haida Nation v BC is one of the most significant Aboriginal law cases in Canada because it sets the guidelines for when to consult and accommodate with First Nations, as well as declares that the responsibility to consult lies solely with the Provincial and Federal governments.

The dispute that led to this case stemmed from the B.C. provincial government's decision to transfer a Tree Farm License on Haida Gwaii to Weyerhaeuser Co. The Haida people have claimed title to Haida Gwaii for over 100 years, and have objected to these types of transfers, which were made without their consent, since at least 1994. They asked that the transfer be set aside.

Legal Issue

The Haida people argued that the Crown (Provincial Government) and Weyerhaeuser have a duty to consult and accommodate them on any timber harvesting activities on Haida Gwaii. The basis for this is that the Haida have an outstanding title claim to the land on Haida Gwaii, which can take a very long time to prove and settle. It was argued that if the parties conducting forestry operations on Haida Gwaii are allowed to continue without consulting the Haida, even though they are very likely to win their title, they would still be deprived of their forests.

The Law

The court declared that consultation must occur even if the Aboriginal title has not yet been proven, because "to limit consultation to the post-proof sphere risks treating reconciliation as a distant legalistic goal, devoid of [...] 'meaningful content'".

This resulted in major clarification on the law around consultation in Canada.

The duty to consult arises when the Crown (Provincial or Federal government) has knowledge of the potential existence of an Aboriginal right or title and contemplates conduct that might adversely affect it.

Appropriate consultation "is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed". There is no duty to agree after

consultation, but there must be good faith efforts to understand each other's concerns and move to address them. When the consultation process suggests amendment of Crown policy, we arrive at the stage of accommodation. The government is required to make reasonable efforts to inform and consult. This suffices to discharge the duty.

Only the Crown is bound by the duty to consult and accommodate. Third parties cannot be held liable for failing to discharge the Crown's duty to consult. The Crown, however, can delegate procedural aspects of the duty to consult to a proponent, and may establish regulations or policy to guide consultation.

Conclusion

The outcome of this case was that Weyerhaeuser was not held to be bound by a duty to consult, while the Crown is, with the above clarification on what the duty to consult consists of.

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