B.C. Natives win appeal for trial

by Scott Smith

A six-member panel of the Supreme Court of Canada has unanimously overturned a decision by two lower BC courts dismissing crucial elements of a claim by the Gitxsan and Wet'suwet'en First Nations asserting their rights to ownership and jurisdiction over a huge section of their traditional homelands in northwestern British Columbia.

In 1993 the BC Court of Appeal sided with the view of a lower trial judge, Allan

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McEachern, who ruled that most of the BC chief's claims to rights and ownership were unilaterally extinguished by the colonial government of British Columbia more than 100 years ago.

The decision said that native land rights were extinguished before the province entered into Confederation in 1871 and left all native claims relatively weak in law. Unlike the rest of Canada, most Aboriginal groups in BC never signed treaties with the Crown protecting their rights.

But last Thursday's Supreme Court ruling will mean a new trial in the so-called Delgamuukw case, which is named after one of the 51 hereditary House titles of the Gitxsan and Wet'suwet'en peoples (the traditional leadership units through which chiefs are selected) which originally brought the claim forward 13 years ago. It involves 58,000 sq. kms. of land and effects a population of about 8,000 natives and 30,000 non-natives.

The Gitxsan and the Wet'suwet'en Nations had been facing pressure from within BC's native community to settle for the limited victory on extinguishment in the 93 ruling. Many in BC saw a Supreme Court appeal as risky and potentially catastrophic for the cause of Aboriginal rights should the court have ruled against them.

Instead, last week's ruling is now expected to dramatically increase the bargaining power of BC natives -- and other First Nations across the country -- who seek negotiated land claim settlements with federal and provincial governments on rights extending beyond the ceremonial and sustenance purposes the courts have so far been prepared to accept in landmark cases like Sparrow and Van der Peet.

"We've changed the law for Indigenous people across North America," said an overjoyed Gord Sebastien, coordinator for the Gitxsan negotiating team. "Not just for the Gitxsan, but I would say all Aboriginals across Canada have had a hand in it because they've all been pushing cases this way and that way."

"We'd like to thank all the Aboriginal people who have protected their rights and did various initiatives to enhance their rights because all that contributed to the change in the mood of the Supreme Court."

In addition to a fundamental change in the opinion of the nation's highest court, that oral histories should play a role in future land claim negotiations, the court also seemed ready to support joint jurisdictional arrangements or other forms of negotiated co-management processes that would give native groups more than mere representation on decision-making bodies.

"It's been a fraud up til now," says Sebastien on the various schemes the province has come up with to involve them on resource development ideas. Now, he says, they will have to be taken seriously or they will seek court injunctions halting future developments.

"We'll walk into court with this (decision) under our arms and I have no doubt that we will be able to walk out with an injunction."

"We can't be conciliatory" cautioned Sebastien. "Once we've gained our rights we have to protect them, or we'll be driven back so far our headlights will be used for taillights."

National leadership and support are going to be important factors in building on this case, he added.