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**Government must consult First Nations on disputed land, top court rules**

Last Updated Thu, 18 Nov 2004 21:49:39 EST

OTTAWA - Governments have a legal duty to consult with First Nations to some extent about the development of disputed land, Canada's top court ruled Thursday.

The Supreme Court of Canada's landmark ruling will have a major impact on how governments and industry deal with First Nations before making land-use decisions.

In the 7-0 decision, the court ruled the government has a legal duty to consult, and if appropriate, accommodate, aboriginal groups prior to their claims.

But the ruling did not extend to the developers of the land.

The amount of consultation depends on the strength and seriousness of the land claim and the effect on the land in use, the court ruled.

But Chief Justice Beverley McLachlin, who wrote the decision for the court, said aboriginal claimants must not "frustrate the Crown's reasonable good faith attempts" at consultation.

"Nor should they take unreasonable positions to thwart governments from making decisions or acting in cases where, despite meaningful consultation, agreement is not reached."

- INDEPTH: [Aboriginal Canadians](#)

Two First Nations in northwestern British Columbia were involved in resource-use battles over land that they say they own.

The question in both cases is whether resource development on Crown lands should proceed if aboriginal claims on those lands haven't been resolved.

**Haida challenged tree farm licence**

One case involves logging by forestry giant Weyerhaeuser on Haida Gwaii – the Queen Charlotte Islands – which is claimed by the Haida Nation.

The B.C. government has given the company permission to log 25 per cent of the Charlottes. But the Haida have challenged the



*Terri-Lynn Williams-Davidson, lawyer for Haida First Nation.*

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legality of the tree farm licence.

The court ruled the government had not properly consulted with the Haida.

### **Tlingit challenged mining road**

The other case involves the Taku River watershed where the Tlingit First Nation is fighting to stop construction of a mining road by Redfern Resources Ltd. – arguing it would harm fish and wildlife.

But the court ruled against the Tlingit First Nation, saying the government had engaged in meaningful consultation.

The federal government and all provinces except Quebec and Manitoba argued they have no constitutional obligation to consult aboriginal peoples who claim titles that have not been proven through courts or treaties.

- FROM AUG. 19, 2002: [Haida win legal fight for consultation](#)



*Geoff Plant, attorney general of B.C.*

The Haida and Tlingit got a major boost in 2002, when the B.C. Court of Appeal said governments and companies must consult and accommodate First Nations before making land-use decisions – even if aboriginal title is still not proven.

That decision prompted the province of B.C. to draw up what it calls interim accommodation agreements, with the government handing over 10 million cubic metres of timber and \$68 million to 70 First Nations.

The minister responsible for treaty negotiations, Attorney General Geoff Plant, said those deals buy off any land rights First Nations may have – at least temporarily.









"For a period of years—maybe three, five, maybe longer— forest companies and governments will be able to do their planning and their business without the risk that some claim of aboriginal title will come along that will disrupt the planning," said Plant.

But the Haida's lawyer, Terri-Lynn Williams-Davidson, noted that the Haida haven't signed one of those deals.

"None of the accommodation efforts that the province has been making have been aimed at protecting culture or the land. It's all at trying to find a way to buy our agreement with the existing status quo," said Williams-Davidson.

Written by CBC News Online [staff](#)

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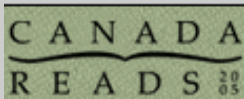
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# ABORIGINAL CANADIANS

**INDEPTH: ABORIGINAL CANADIANS**

## Introduction

CBC News Online | Updated July 02, 2004

Aboriginal Canadians are a part of the fabric of Canada, a brave federation of differences: multiculturalism, official bilingualism, minority rights, cultural and geographic diversity, ancient grievances. Managing these differences is a constant juggling act, a high stakes poker game, an act of faith.

From fishing rights to the creation of a new territory, CBC News has examined a number of issues and stories related to aboriginals in Canada.

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Total population of Canada:  
31,414,000

Total people of aboriginal  
origin: 1,319,890

#### **Origin**

North American Indian:  
957,650\*  
Métis:  
266,020\*  
Inuit:  
51,390\*  
More than one aboriginal  
origin:  
44,835

#### **Reserves**

People of aboriginal origin  
living on reserve: 285,625

People of aboriginal origin  
living off reserve: 1,034,260

People of non-aboriginal  
origin living on reserve:  
36,230

*(Source: 2001 Census,  
Statistics Canada)  
\*includes people of a single  
aboriginal origin and those of  
a mix of one aboriginal origin  
with non-aboriginal origins*

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## Haida win legal fight for consultation

WebPosted Aug 19 2002 12:19 PM PDT

Vancouver - The B.C. Court of Appeal has confirmed its earlier landmark decision that requires Weyerhaeuser to consult in good faith with the Haida Nation before logging on the Queen Charlotte Islands.

- LINK: [B.C. Court of Appeal decision](#)

The original ruling which came down in February could have a major impact on how Crown land use decisions are made in B.C.

So Weyerhaeuser went back to court, arguing that it was the government's responsibility to consult with First Nations, not the company's.



Queen Charlottes

It was joined by the Chamber of Commerce, the Cattleman's Association and the Council of Forest Industries who all have an interest in the outcome.

However, two of the three judges disagreed with the company, saying Weyerhaeuser and the Crown have legally enforceable duties to consult with the Haida in good faith.


The judges go on to say that the company and the Crown have to find a workable compromise between aboriginal interests, the public interest and the company's goals.

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