

BACKGROUND

Introduction

The Hupacasath First Nation has commenced action against the Provincial Crown for failure to negotiate in good faith as part of Justice Smith's court ordered consultation and obtain an independent settlement court judge to facilitate a settlement.

Background on *Hupacasath v. British Columbia (Minister of Forests)* Decision

The case of *Hupacasath v. British Columbia (Minister of Forests)* was a result of the Minister of Forests decision in 2004 to permit the removal of over 70,000 hectares of private land from Tree Farm Licence 44.

As much of the removed land is within Hupacasath First Nation territory, which has been used for thousands of years for hunting, fishing, gathering and spiritual use, the court ruled that the Crown breached its duty to meaningfully consult with Hupacasath before deciding to remove the lands.

In her decision Justice Lynn Smith ordered a two year consultation period for the Province to address Hupacasath's interests and set out nine conditions that Brascan, Island Timberlands and their successors had to fulfil in the interim on the removed lands. These conditions required the protection of ungulate winter ranges and community watersheds, access for aboriginal groups and seven days notice to Hupacasath of any intention to conduct activities on the land which may interfere with the exercise of aboriginal rights.

Although Justice Smith did not quash the Minister's decision to remove the lands as requested, the Hupacasath First Nation was confident that the Crown would address their concerns through the court ordered consultation process. As stated by Chief Judith Sayers after the decision was handed down, "the forests are our cathedrals and we hope through the consultation process that the court has ordered that we will be able to protect that which is most sacred and precious to us."

As the parties fell critically short of reaching an agreement within the two year consultation period, Hupacasath First Nation has commenced action against the Provincial Crown for a failure to negotiate in good faith. The Crown refuses to understand the amount of damage they have consented to on the removed lands and accommodate Hupacasath to that degree.

Background on Hupacasath First Nation

Hupacasath First Nation is one of fourteen Nuu-chah-nulth tribes that have owned, used and occupied the lands, water and resources within their traditional territories on the west coast of Vancouver Island since time immemorial.

The Hupacasath First Nation territory encompasses approximately 230,000 hectares and includes the city of Port Alberni. The majority of the 300 members reside on the Ahahswinis and Kleekoot Reserves located along the Somass and Sproat rivers.

Hupacasath First Nation is a strong, vibrant community working towards economic self-sufficiency through sustainable development and resource management that respects their unique culture and environment.

The community is lead by Chief Judith Sayers who has been the elected chief for the past thirteen years. Chief Sayers is also an elected official to the political executive of the First Nations Summit, the Summit Task Group. A strong supporter of both the BC Treaty Process and the Provincial Governments “New Relationship” with aboriginal people, Chief Sayers has worked tirelessly to reconcile aboriginal rights and title in British Columbia.

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