September 10, 2014

Open Letter to the Premier of British Columbia

Tsilhqot'in decision provides a framework for a principled and respectful relationship between Indigenous and non-Indigenous peoples

Dear Premier Christy Clark,

In *Tsilhqot'in Nation v. British Columbia,* the Supreme Court recognized the Tsilhqot'in Nation's ownership of title land in its traditional territory. This decision provides a crucial opportunity to re-frame the relationship between First Nations and the province of British Columbia.

The Tsilhqot'in situation is not unique. The legal principles informing the Court's unanimous ruling in the Tsilhqot'in case are widely applicable and should be adopted as part of a just and principled framework for the long overdue recognition of Indigenous land rights in BC.

Toward this end, our organizations would like to draw your attention to these conclusions of the Supreme Court:

- The Supreme Court stated that the doctrine of *terra nullius* "never applied in Canada." The Court affirmed that Indigenous peoples exercised rights to control, use and benefit from their lands prior to the arrival of Europeans and that the assertion of European sovereignty in British Columbia did not extinguish this "independent legal interest."

- The Court affirmed that contemporary Aboriginal title, "the unique product of the historic relationship between the Crown and the Aboriginal group in question," includes the right to use the land according to their own values and wishes and a responsibility to protect the land for the use of future generations.

- In regard to federal and provincial governments, the Court stated that "incursions on Aboriginal title cannot be justified if they would substantially deprive future generations of the benefit of the land."

- The Court rejected assertions by the province that Indigenous title lands are necessarily limited to small tracts of continuous intensive use. Instead, the Court found that Indigenous societies that historically exercised control over large territories could establish ongoing title to these lands.

- The Court stated: “the Crown had ... a legal duty to negotiate in good faith to resolve land claims”. “The governing ethos,” the Court said, “is not one of competing interests but of reconciliation.” The Court also stated, “What is at stake is nothing less than justice for the Aboriginal group and its descendants, and the reconciliation between the group and broader society.”

- Finally, the Court also reaffirmed principles established in previous decisions such *Delgamuukw* and *Haida Nation*, that the federal and provincial governments have an obligation to act in good faith to protect Indigenous interests pending the resolution of outstanding title disputes. The Court also cautioned government that it would be in its own best interest to obtain the consent of Indigenous peoples on resource development decisions lest these decisions be overturned at a later date as a consequence of recognition of Indigenous land ownership.

Our organizations made a joint intervention in the Tsilhqot’in title case because we believed that the outcome would have profound importance for Indigenous peoples throughout Canada. In our view, the Court’s decision provides a principled framework for fulfilling the Constitutional promise of recognition of Aboriginal land title. Further, the framework set out by the Court includes key elements that are consistent with international human rights law.

On the eve of your historic meeting with Chiefs of British Columbia, we urge your government to publicly commit to fully upholding the *Tsilhqot’in* decision in the spirit of harmonious relations, mutual co-operation and respect for Aboriginal title and governance.

Sincerely,

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