

Court quashes Vancouver Island timber grant to Western Forest Products for not consulting First Nation band

CARLA WILSON, TIMES COLONIST 05.16.2014 |



The province had a duty to consult with the First Nation band before granting timber to Western Forest Products, Justice William Ehrcke said in his order. File: The Western Forest Products mill is seen in Nanaimo, B.C., on Wednesday April 30, 2014. *CHAD HIPOLITO / THE CANADIAN PRESS*

The B.C. Supreme Court has quashed a Ministry of Forests decision to grant close to one million cubic metres of timber on northwest Vancouver Island to Western Forest Products without consulting a First Nation band.

The province had a duty to consult with the band before its April 2013 decision, Justice William Ehrcke said in a decision released Thursday. Because that did not happen, that allocation decision is void, he ruled.

“I think this really opens the door to consultation,” Ehattesaht First Nation Coun. Lyle Billy said, responding to the decision.

“The big logging companies like Western Forest Products are going to have to sit down with the Nations in the territory that they are logging. There is no other way around it now. I think we opened those doors for other Nations.”

The Ehattesaht band asserts rights and title to an area on northwest Vancouver Island, much of which is within Tree Farm Licence 19. The tree farm licence is owned by the Crown and cutting rights were granted to Western Forest Products.

At issue is 1.38 million cubic metres of unharvested timber called “undercut” within land covered by the licence. Because it had not been logged by the company within a certain cutting period, it was up to the Crown to decide how to allocate it.

The ministry decided to grant 75 per cent of the undercut to the company and retain 25 per cent for potential distribution to third parties, including First Nations.

That meant it would have been impossible for the band to get anything more than 25 per cent of the undercut, the judge said.

Before the decision was made, the province engaged in an extensive consultation with the company, but not with the Ehattesaht band, Ehrcke said. “Indeed, the ministry did not even notify Ehattesaht that the matter was under consideration.”

The band took the province and company to court to challenge the allocation.

Ehattesaht argued that the province had a constitutional obligation to consult with them and said it had made it clear the band wanted the opportunity to harvest timber, including the undercut.

Billy expects the ministry and company will approach officials in the 450-member band to discuss timber allocation.

“This is big,” Billy said. “We strive to be self-sustaining. We are a small Nation, so we rely on a lot of the resources in our territory — the timber and the fish that go through our waters.”

“All we are asking for is our fair share,” he said.

“They were going behind closed doors and not even talking to us about anything. We weren’t asking for it all, that’s for sure.”

The Ministry of Forests said in a statement it is reviewing the decision and considering next steps, adding that the Crown has 30 days to decide whether or not to file an appeal.

A spokesman for Western Forest Products could not be reached.

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